

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 724

FRANK A. DUSCH, ET AL., APPELLANTS,

vs.

J. E. CLAYTON DAVIS, ET AL.

APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INDEX

	Original	Print
Record from the United States District Court for the Eastern District of Virginia, Norfolk Division		
Complaint	1	1
Designation of Three-Judge Court	15	12
Answer	19	13
Motion to dismiss	25	16
Resolution adopted February 23, 1965	27	17
Amended complaint	30	20
Answer to amended complaint	35	21
Record from the Supreme Court of Appeals of Virginia, at Richmond, Record No. 5928, Peti- tion for writ of mandamus (excerpts)	37	23
Transcript of depositions taken June 8, 1964	38	23
Testimony of Robert Fitzhugh Newsome	39	23
Ivan Doughty Mapp	42	25
Giles Glass Dodd	49	31
Sidney S. Kellam	54	35
cross	56	36

Record from the United States District Court for the Eastern District of Virginia, Norfolk Division —Continued		
Record from the Supreme Court of Appeals of Virginia, at Richmond, Record No. 5928, Peti- tion for writ of mandamus (excerpts)—Con- tinued		
Consolidation Agreement for the City of Vir- ginia Beach and Princess Anne County, Vir- ginia _____	62	40
Acts of Assembly (VA., 1962) Chapter 147— Charter for New City, Approved Feb- ruary 28, 1962 _____	72	48
Opinion, Bryan, J., November 9, 1965 _____	85	74
Order dissolving Three-Judge Court _____	90	77
Memorandum opinion, Hoffman, J., December 7, 1965 _____	92	78
Order staying further proceedings _____	97	82
Voters' supplemental complaint filed pursuant to authority contained in the Memorandum opin- ion _____	98	83
Exhibit "A"—Portions of Charter Amend- ments _____	104	87
Answer to supplemental complaint _____	105	88
Transcript of hearing on supplemental complaint, March 23, 1966 (excerpts) _____	108	90
Present _____	108	90
Testimony of Edward T. Caton— direct _____	109	91
Rolland Winter— direct _____	122	97
F. Mason Gamage— direct _____	127	98
Edward T. Caton— (recalled)— direct _____	134	103
cross _____	139	104
Memorandum opinion, Hoffman, J., April 8, 1966	140	105
Final decree _____	147	115
Clerk's certificate (omitted in printing) _____	148	116

INDEX**iii**

	Original	Print
Proceedings in the United States Court of Appeals for the Fourth Circuit _____	149	116
Opinion, Bryan, J. _____	149	116
Judgment _____	158	123
Notice of appeal to the Supreme Court of the United States _____	159	124
Clerk's certificate (omitted in printing) _____	162	125
Order extending time _____	163	126
Order postponing jurisdiction _____	164	127

[fol. 1]

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

Civil Action No. 4912

J. E. CLAYTON DAVIE, ROLLAND D. WINTER, CORNELIUS D. SCULLY and HOWARD W. MARTIN, who sue in behalf of themselves and all other citizens of the City of Virginia Beach, in the Commonwealth of Virginia, similarly situated, Plaintiffs,

vs.

FRANK A. DUSON, Member, City Council, City of Virginia Beach, 504 Cavalier Drive, Virginia Beach, Virginia,

JOHN McCOMBS, Member, City Council, City of Virginia Beach, The Traymore, 9th and Atlantic Streets, Virginia Beach, Virginia,

EDWARD T. CATON, III, Member, City Council, City of Virginia Beach, 418 22nd Street, Virginia Beach, Virginia,

W. H. KITCHIN, JR., Member, City Council, City of Virginia Beach, 203 Cavalier Drive, Virginia Beach, Virginia,

L. S. HODGES, Member, City Council, City of Virginia Beach, 4400 Holly Road, Virginia Beach, Virginia,

S. PAUL BROWN, Member, City Council, City of Virginia Beach, Route #2, Box 2123, Princess Anne Station, Virginia Beach, Virginia,

[fol. 2]

SWINDELL POLLOCK, Member, City Council, City of Virginia Beach, 309 Overland Road, Virginia Beach, Virginia,

[File endorsement omitted]

KENNETH N. WHITEHURST, Member, City Council, City of Virginia Beach, Bay Bay Station, Virginia Beach, Virginia,

LAWRENCE E. MARSHALL, Member, City Council, City of Virginia Beach, 8117 Brinson Arch, Virginia Beach, Virginia,

JAMES DARDEN, Member, City Council, City of Virginia Beach, 349 Laskin Road, Virginia Beach, Virginia,

EARL TREBAULT, Member, City Council, City of Virginia Beach, Rural Route #4, Hickory Back Bay Station, Virginia Beach, Virginia,

JOHN B. JAMES, Chairman, Electoral Board, City of Virginia Beach, 20 Bay Drive, Virginia Beach, Virginia,

HARRY BAILEY, Secretary, Electoral Board, City of Virginia Beach, 202 67th Street, Virginia Beach, Virginia,

JOSEPH T. CROSSWHITE, SR., Member, Electoral Board, City of Virginia Beach, 1107b Pacific Avenue, Virginia Beach, Virginia,

V. ALFRED ETHERIDGE, Treasurer, City of Virginia Beach, 9909 Thalia Drive, Virginia Beach, Virginia,

IVAN D. MAPP, Commissioner of Revenue, City of Virginia Beach, R. D. 4, Bayside, Virginia Beach, Virginia,

Defendants.

[fol. 3]

VOTERS' COMPLAINT TO CORRECT MALAPPORTIONMENT OF THE REPRESENTATION ON CITY COUNCIL OF THE CITY OF VIRGINIA BEACH FROM THE BOROUGHES OF THE CITY OF VIRGINIA BEACH—Filed December 29, 1964

I.

This Court has original jurisdiction of this action pursuant to 28 U. S. Code Section 1343 (3) and the plaintiffs have a right to bring this suit pursuant to the Civil Rights Act of the United States, 42 U. S. Code Sections 1983, 1988.

II

Under the provisions of 28 U. S. Code Sections 2281 and 2284 special provision is made for hearing causes of action involving restraining the enforcement, operation or execution of any state statute by restraining the action of any officer of such state, whenever said application is based on the unconstitutionality of such statute.

III

The plaintiffs, J. E. Clayton Davis, Rolland D. Winter, Cornelius D. Scully and Howard W. Martin, are citizens of the Commonwealth of Virginia; of the Boroughs of Lynnhaven, Bayside, Lynnhaven and Kempsville, respectively, in the City of Virginia Beach, Virginia; duly qualified voters, electors and taxpayers, who sue in behalf of themselves and all other citizens of the City of Virginia Beach, Virginia, similarly situated.

[fol. 4]

IV.

The defendants and each of them are citizens of the United States and of the Commonwealth of Virginia and reside in said Commonwealth and in the City of Virginia Beach, Virginia, and are sued in their representative capacities as hereinafter set forth:

A. The defendants, Frank A. Dusch, John McCombs, Edward T. Caton, III, W. H. Kitchin, Jr., L. S. Hodges, S. Paul Brown, Swindell Pollock, Kenneth N. Whitehurst, Lawrence E. Marshall, James Darden and Earl Teabault are members of the City Council of said City and have the duties and obligations, among others, of imposing taxes on real estate and prescribing other forms of taxation and to pass laws governing the appropriation and disbursement of such local revenues within the City of Virginia Beach and the boroughs thereof.

B. The defendants, John B. James, Harry Bailey and Joseph T. Crosswhite, Sr., are members of the Electoral Board of the City of Virginia Beach, Virginia, and said defendants are charged with supervising and co-ordinating and making rules and regulations for the conduct of City Councilmanic elections; preparing ballots and performing other duties in respect to said elections.

C. The defendant, V. Alfred Etheridge, is Treasurer of the City of Virginia Beach, Virginia, and has the duty, among others, of collecting taxes and disbursing funds in behalf of the City of Virginia Beach, Virginia.

[fol. 5] D. The defendant, Ivan D. Mapp, is Commissioner of Revenue of the City of Virginia Beach, Virginia; and has the duty, among others, of assessing property within the Boroughs of the City of Virginia Beach, Virginia, for the purpose of taxation.

V.

Plaintiffs are now denied the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States of America. Plaintiffs bring this action on their own behalf and on behalf of all other residents of the City of Virginia Beach and the boroughs thereof who are similarly situated. Plaintiffs seek a declaration of their rights and a declaration of the validity or invalidity of the acts and statute of the Commonwealth of Virginia which created the charter of the City of Virginia Beach and in particular those provisions which constituted the City Council of the City of Virginia Beach and the apportionment of representation among the boroughs of said city. They further seek such injunctive relief as may be proper to assure them and all other voters of the City of Virginia Beach the free and equal franchise of the equal protection of the laws to which they are entitled under the Fourteenth Amendment to the Constitution of the United States and which rights are now being denied

them by the defendants who have been, and are complying with unconstitutional statutes and private acts as hereafter more particularly set forth.

VI.

Pursuant to a Consolidation Agreement between the [fol. 6] City of Virginia Beach, Virginia, and Princess Anne County, Virginia, the corporate limits of the City of Virginia Beach that existed prior to January 1, 1963, were extended to include all lands and persons included within the exterior limits of Princess Anne County, Virginia, as of January 1, 1963, and on or after that date a City Council for the City of Virginia Beach was constituted pursuant to the provisions of Section 3.01 of the Charter of Virginia Beach, which charter was granted by an Act of the General Assembly of Virginia in 1962, which charter provision reads as follows:

"Section 3.01 COMPOSITION. The city shall be divided into seven boroughs. One of such boroughs shall comprise the City of Virginia Beach as existing immediately preceding the effective date of this charter and shall be known as the borough of Virginia Beach, and the remaining six boroughs shall comprise the six magisterial districts of Princess Anne County as existing immediately preceding the effective date of this charter and shall be known as the boroughs of Bayside, Blackwater, Kempsville, Lynnhaven, Princess Anne (formerly known as Seaboard) and Pungo. The council shall consist of eleven members, five of whom shall be elected by and from the borough of Virginia Beach and one by and from each of the other six boroughs. The five members of the council of the City of Virginia Beach and the six members of the Board of Supervisors of Princess Anne County holding office immediately preceding the effective date of this charter shall constitute the council of the city and shall hold office until the beginning of the terms of their successors.

At such time as may be determined by the affirmative vote of seven councilmen, which shall not be earlier than five years after the effective date of this charter, but not later than September 1, 1971, the council shall submit to the qualified voters of the city a new plan for election of councilmen."

VII.

The aforesaid City Council approved and has maintained municipal governmental districts, which, according to the [fol. 7] official 1960 census of the United States, contained the following number of persons:

Representation On Council	District	Population Per District—1960
1	Blackwater	733
1	Pungo	2,504
1	Princess Anne	7,211
1	Kempsville	13,900
1	Lynnhaven	23,731
1	Bayside	29,048
5	Virginia Beach	8,091

It is the duty of the aforesaid defendant City Councilmen to constitute the municipal governmental districts of the City of Virginia Beach in such a manner that representation will, as far as practicable, be in proportion to the population of such district, or in the alternative to conduct elections for councilmen on an at large basis. An official copy of the United States Census of population is attached to the original of this Complaint, marked as Exhibit "A" for identification and made a part of this complaint by reference.

VIII.

The boroughs in which the plaintiffs reside are the fastest growing boroughs in the City of Virginia Beach and the

disparities in population existing between the boroughs of Virginia Beach as of the 1960 census are increasing and becoming more aggravated each year, the said boroughs having a population as of January 1, 1964 as follows:

[fol. 8]

District	Population
Blackwater	862
Pungo	2,806
Princess Anne	7,957
Kempsville	22,254
Lynnhaven	37,760
Bayside	36,027
Virginia Beach	10,473

IX.

The composition and organization of the City Council of Virginia Beach, Virginia, is as follows:

Representation On Council	District	Population Per District 1960	Projected Population/ Per District, January 1, 1964
1	Blackwater	733	862
1	Pungo	2,504	2,806
1	Princess Anne	7,211	7,957
1	Kempsville	13,900	22,254
1	Lynnhaven	23,731	37,760
1	Bayside	29,048	36,027
5	Virginia Beach	8,091	10,473

X.

Plaintiffs aver that the composition and organization of the City Council of the City of Virginia Beach, Virginia, as presently existing has resulted and will continue to result in invidious discrimination against your plaintiffs and all other inhabitants of the municipal governmental districts known as Lynnhaven Borough, Bayside Borough and Kempsville Borough, in which the plaintiffs reside

and against the inhabitants of other municipal governmental districts of the City of Virginia Beach, Virginia. [fol. 9] Plaintiffs, as citizens of the United States of America, the Commonwealth of Virginia, and the City of Virginia Beach, Virginia, possess an inherent right to equal representation on the City Council of the City of Virginia Beach, Virginia, but by virtue of the invidious discrimination practiced by the Council of the City of Virginia Beach, Virginia, in composing and organizing itself in the manner heretofore detailed, the residents of Lynnhaven Borough, together with the residents of Kempsville Borough and Bayside Borough, are grossly under-represented on the said Council, the three boroughs being allocated one Councilman each, or a total of three for a population, according to the 1960 census, of 65,676, whereas the residents of the Boroughs of Virginia Beach, Blackwater, Pungo and Princess Anne are allocated eight Councilmen for a total population of 18,539. As a further example of the unconstitutional effects of the discriminatory dilution of the weight of a voter's ballot in the Bayside Borough, plaintiffs state that the Councilman for the said Borough represented 28,045 persons pursuant to the 1960 census and the Councilman from the Blackwater Borough represented only 733 persons. By reason of the foregoing gross and aggravating disparity, the voice and vote of the resident of Blackwater is forty times more influential than the voice and vote of a resident of Bayside Borough. Stated in the alternative, the ballot potency of a resident of Blackwater Borough is forty times greater than that of a resident of Bayside Borough. The population growth in the suburban Boroughs of Kempsville, Lynnhaven and Bayside is much more rapid than in the now favored and weighted Boroughs of Blackwater, Pungo, Princess Anne and Virginia Beach, so that with each pass- [fol. 10] ing year the discrimination against plaintiffs and other residents of the aforesaid suburban Boroughs will become more acute and invidious.

XI.

That the total taxes to be realized from real estate as of the April 1964 assessments in the City of Virginia Beach, is \$4,145,821.54. Of this sum of \$970,850.04 will be realized from Bayside Borough; \$707,124.54 from the Kempsville Borough and \$1,471,431.02 from Lynnhaven Borough, or a total from these three districts of \$3,149,405.60, which sum represents 75% of the total taxes realized from real estate for the entire city. 78% of the population of the City of Virginia Beach resides in the three boroughs in which the plaintiffs reside and yet the plaintiffs only have three representatives on the eleven man Council of said city, or a total of 27% of the representation on said Council.

By reason of this unconstitutional discrimination in representation, plaintiffs and those similarly situated have an ineffective influence and are deprived of the equal protection of the laws in the manner in which tax revenues are appropriated and disbursed.

XII.

Plaintiffs aver that when all of the many inequalities in the above mentioned charter provisions constituting the City Council of the City of Virginia Beach are considered together, they result in a distortion of the constitutional system as established, defined and guaranteed by the Four- [fol. 11]teenth Amendment to the Constitution of the United States and that this distortion prevents the City Council of the City of Virginia Beach from being a body representative of the City of Virginia Beach and denies to plaintiffs the equal protection of the laws. Plaintiffs further aver that as result thereof a minority of the people of the City of Virginia Beach control and will continue to control the deliberations and decisions of the City Council of the City of Virginia Beach contrary to the Constitution of the United States of America.

XIII.

Plaintiffs aver that the unconstitutional apportionment aforesaid can be made constitutional only by redistribution of representation on the Council of the City of Virginia Beach among the Boroughs of said city substantially in proportion to their respective populations or by having an election forthwith whereby the Council will be elected on an at large basis, and unless the inequities herein complained of are corrected by this Court the plaintiffs and all others similarly situated will continue to be denied the equal protection of the laws and each day that the malapportioned Council of the City of Virginia Beach continues to function the plaintiffs herein will be irreparably damaged.

Wherefore, plaintiffs pray:

I. That this Court may take jurisdiction of this controversy.

II. That a special three-judge court be called and impanelled to hear and determine this action and to declare the rights of plaintiffs in the premises to be as follows:

[fol. 12] A. That the present apportionment of the Council of the City of Virginia Beach, Virginia, denies the plaintiffs and others similarly situated the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States of America.

B. That the Charter of the City of Virginia Beach as created and granted by the Commonwealth of Virginia insofar as it relates to the composition of the Council thereof as now in force is unconstitutional and void.

C. That upon final hearing of this action this Court will grant to the plaintiffs the following relief:

(1) That the defendant Councilmen, Commissioner of Revenue and City Treasurer be permanently restrained and enjoined from assessing and collecting taxes, selling bonds or appropriating revenues therefrom until a constitutionally

representative City Council be constituted, but that the force and effect of said injunction be stayed for a period of three months from the date of entry of this Court's decree to enable the City Council of the City of Virginia Beach and the defendant members of the Electoral Board of the City of Virginia Beach to reapportion the Boroughs of the City of Virginia Beach so that they contain, as nearly as practicable, the same number of inhabitants and hold elections to fill the offices of City Council as reapportioned, or, in the alternative, to hold elections for an at large election of the said members of said City Council within a period of three months from the date of entry of said decree.

(2) That the defendant members of the Electoral Board of the City of Virginia Beach, Virginia, be enjoined from [fol. 13] printing ballots or holding any elections whatsoever for members of Council until there be a constitutional reapportionment of the representation on the Council of the City of Virginia Beach, Virginia.

(3) That plaintiffs may have such other, further and alternative relief as the nature of this action may require and this Court may deem proper.

J. E. Clayton Davis, Rolland D. Winter, Cornelius D. Scully, Howard W. Martin.

Subscribed and sworn to before me this 22nd day of December, 1964.

Catherine J. Crane, Notary Public.

My commission expires November '8, 1965.

Howell, Anninos & Daugherty, 808 Maritime Tower, Norfolk, Virginia, Counsel for Plaintiffs.

[fol. 15]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

No. 4912

[Title omitted]

DESIGNATION OF THREE-JUDGE COURT
—Filed January 7, 1965

It appearing to the undersigned Chief Judge of the Fourth Judicial Circuit of the United States that a civil action as above entitled has been instituted in the United States District Court for the Eastern District of Virginia, the stated purpose of which is to restrain the enforcement, operation, or execution of the acts and statute of the Commonwealth of Virginia which created the charter of the City of Virginia Beach, and, in particular, those provisions which constituted the City Council of the City of Virginia Beach and the apportionment of representation among the boroughs of the said City, to the end that injunctive relief may be secured to give to the plaintiffs and all other voters of the City of Virginia Beach the free and equal franchise and the equal protection of laws to which they are allegedly [fol. 16] entitled under the Fourteenth Amendment to the Constitution of the United States and which rights are now allegedly being denied them by the defendants who are allegedly complying with unconstitutional statutes and acts as stated in said complaint; and that application for injunction was made to Honorable Walter E. Hoffman, United States District Judge for the Eastern District of Virginia, who has notified the undersigned, pursuant to § 284 of Title 28, United States Code Annotated, of the pendency of said application, to the end that a court of

[File endorsement omitted]

three judges may be constituted, as required by § 2281, Title 28, United States Code Annotated.

Now, therefore, I do hereby designate Honorable Albert V. Bryan, United States Circuit Judge, Fourth Judicial Circuit, and Honorable John D. Butzner, Jr., United States District Judge for the Eastern District of Virginia, to serve with the said Honorable Walter E. Hoffman in the hearing and determination of the above entitled action, as provided by law, the three to constitute a District Court of three judges as provided by § 2284, Title 28, United States Code Annotated.

This the 5th day of January, 1965.

Clement L. Haynsworth, Jr., Chief Judge, Fourth Circuit.

[fol. 19]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION
Civil Action No. 4912

[Title omitted]

ANSWER—Filed January 25, 1965

For answer to the Complaint filed by the plaintiffs, J. E. Clayton Davis, et al., the defendants, Frank A. Dusch, et al., state as follows:

1. Defendants deny the allegations of paragraph I. As this action is brought against local officials to change the manner of election of city councilmen, no federally protected right is involved and no justiciable issue recognizable in this Court has been presented.

[File endorsement omitted]

2. Defendants admit that 28 U. S. Code Sections 2281 and 2284 contain provisions substantially as stated in paragraph II but deny that the requisite grounds for convening a three-judge court are present in this action. Although this action may seek to restrain the enforcement, operation or execution of a state statute, it seeks to do so by restraining the actions of purely local officials rather than state officers.

3. Defendants deny that the plaintiffs sue on behalf of [fol. 20] all other citizens of the City of Virginia Beach, Virginia, similarly situated but admit all other allegations of paragraph III.

4. The allegations of paragraph IV are admitted.

5. Defendants deny the allegations of paragraph V that the Charter of the City of Virginia Beach or any acts or statutes of the Commonwealth of Virginia granting such charter are invalid in any respect. Defendants further deny that the plaintiffs or any other citizens of the City of Virginia Beach are in any way denied any rights guaranteed to them by the Fourteenth Amendment to the United States Constitution.

6. The allegations of paragraph VI are admitted.

7. The municipal governmental districts of the City of Virginia Beach, their population and representation on the City Council as alleged in paragraph VII are admitted. Defendants deny all other allegations of this paragraph.

8. Defendants admit the allegations of paragraph VIII as to the rapid growth of Bayside, Kempsville and Lynnhaven boroughs. As there has been no census since 1960, the defendants are not informed as to the population of the boroughs at January 1, 1964, and call for strict proof thereof.

9. Defendants admit that unofficial population projections at January 1, 1964, have been made as alleged but are not informed as to their accuracy and call for strict

proof thereof. All other allegations of paragraph IX are admitted.

10. The allegations of paragraph X are denied.

11. Defendants admit that the allegations of the first [fol. 21] three sentences of paragraph XI are substantially correct but deny the allegations of the last sentence.

12. The allegations of paragraph XII are denied.

13. The allegations of paragraph XIII are denied.

Wherefore, the defendants pray that the Court dismiss this action for lack of jurisdiction of the matter in controversy. In the event the Court should determine it has jurisdiction the defendants pray that the matter be heard by the District Judge alone and that the request for a special three-judge court be denied; that the Court determine that the present apportionment of the Council of the City of Virginia Beach does not deny the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution; that the Charter provisions regarding the composition of the City Council are not unconstitutional; that the orderly administration of the affairs of the City requires that in no event should an injunction be granted restraining the City Councilmen, Commissioner of Revenue and Treasurer, or any of them, from assessing and collecting taxes, selling bonds or appropriating revenues for the government of the City; that all other relief requested by the plaintiffs be denied; and that the Complaint be dismissed.

Frank A. Dusch, John McCombs, Edward T. Caton, III, W. H. Kitchin, Jr., L. S. Hodges, S. Paul Brown, Swindell Pollock, Kenneth N. Whitehurst, Lawrence E. Marshall, James Darden, Earl Teabult, John B. James, Harry Bailey, Joseph T. Crosswhite, Sr., V. Alfred Etheridge, and Ivan D. Mapp, George W. Vakos, Harry Frazier III, Counsel for Defendants.

[fol. 22] George W. Vakos, City Attorney, 201 Courthouse Drive, Princess Anne Station, Virginia Beach, Virginia 23456.

Archibald G. Robertson, Harry Frazier, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212.

Certificate of Service (omitted in printing).

[fol. 25]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

Civil Action No. 4912

[Title omitted]

MOTION TO DISMISS—Filed March 15, 1965

Defendants Frank A. Dusch, et als., respectfully request the Court to dismiss this action without prejudice to the rights of the plaintiffs to reinstitute the action (a) following the adjournment of a special session of the General Assembly of Virginia if held during 1965 and if no bill is introduced at such session to amend the plan of representation on the Council, as set out in the charter of the City of Virginia Beach, or (b) following adjournment of the 1966 session of the General Assembly if no such bill is enacted or (c) at any time after the enactment of such a bill.

In support of this motion defendants represent that on February 23, 1965, the Council of the City of Virginia Beach by unanimous vote adopted a resolution recognizing the need for prompt change in the plan of representation on

[File endorsement omitted]

the Council and obligating itself to request its representatives in the General Assembly to undertake to have the charter of the City of Virginia Beach amended at the earliest opportunity to provide a new plan of representation [fol. 26] under which the vote of one citizen will be substantially equal to the vote of every other citizen in the city. A certified copy of such resolution is attached hereto and made a part hereof.

Defendants respectfully request that this motion be heard either alone or together with questions of jurisdiction and convening a three-judge court, but in any event prior to a hearing on the merits.

Frank A. Dusch, John McCombs, Edward T. Caton, III, W. H. Kitchin, Jr., L. S. Hodges, S. Paul Brown, Swindell Pollock, Kenneth N. Whitehurst, Lawrence E. Marshall, James Darden, Earl Teabult, John B. James, Harry Bailey, Joseph T. Crosswhite, Sr., V. Alfred Etheridge, and Ivan D. Mapp, Harry Frazier III, Counsel for Defendants.

George W. Vakos, City Attorney, 201 Courthouse Drive, Princess Anne Station, Virginia Beach, Virginia 23456.

Archibald G. Robertson, Harry Frazier, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212.

Certificate of Service (omitted in printing).

[fol. 27]

ATTACHMENT TO MOTION

On motion by Mr. Kitchin, seconded by Mr. Marshall and by unanimous vote, the following resolution was adopted:

Resolution

Whereas, the consolidation agreement dated November 10, 1961, between former Princess Anne County and the

City of Virginia Beach and the charter granted by the General Assembly pursuant to such agreement provide that the system of election of councilmen may be changed on the initiative of the Council after January 1, 1968, and must be changed before September 1, 1971; and

Whereas, the two political subdivisions were consolidated on January 1, 1963, and the City of Virginia Beach has progressed under its new government with greater speed and harmony than had been anticipated; and

Whereas, the drastic changes in concepts of representation brought about by decisions of the United States Supreme Court since the adoption of the city's present plan of representative have called into question the wisdom of continuing this plan; and

Whereas, members of the Council have recognized the inequalities of the present plan and are of opinion that the public interest requires that the plan be changed sooner than January 1, 1968.

Now, Therefore, Be It Resolved by the Council of the City of Virginia Beach, Virginia:

1. The present plan of representation of the Council of the City of Virginia Beach should be replaced as soon as practicable by a new plan providing substantial equality of representation.

2. The Council hereby commits itself to initiate a new plan for representation of the Council and to request its representatives in the General Assembly to introduce a bill at the earliest opportunity to amend the charter of the City of Virginia Beach to effectuate such plan and to urge its representatives to press for the prompt passage of such bill.

3. The plan will provide for the election of councilmen by one of the following methods so that under any plan the vote of one citizen will be substantially equal to the vote of every other citizen in the city:

[a] election of councilmen at large;

[b] election of councilmen by and from districts of substantially equal population;

[c] election of councilmen from districts but with each councilman voted on at large;

[d] a combination of councilmen elected at large under plan [a] and councilmen elected from districts under plan [b] or plan [c].

4. Although it is the sense of the Council that councilmen now in office should serve out their elected terms and that the first election of councilmen under the new plan should take place in June, 1967, the Council is willing to hold new elections in June, 1966, if so required by the amendment to its charter or otherwise.

Councilmen present: Mayor Frank A. Dusch, S. Paul Brown, James G. Darden, L. Stanley Hodges, W. Hugh Kitchin, Jr., Lawrence E. Marshall, John W. McCombs, Swindell Pollock, Kenneth N. Whitehurst and Earl M. Tebault.

Councilmen absent: Edward T. Caton, III.

Voting aye: Dusch, Brown, Darden, Hodges, Kitchin, Marshall, McCombs, Pollock, Whitehurst and Tebault.

Voting nay: None.

Adopted by the Council of Virginia Beach, on February 23, 1965.

[fol. 30]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

Civil Action No. 4912

[Title omitted]

VOTERS' AMENDED COMPLAINT TO CORRECT MALAPPORTION-
MENT OF THE REPRESENTATION ON CITY COUNCIL OF THE
CITY OF VIRGINIA BEACH FROM THE BOROUGHES OF THE
CITY OF VIRGINIA BEACH—Filed March 24, 1965

I.

Plaintiffs adopt each and every allegation contained in
the original complaint filed herein as if restated herein.

II.

Plaintiffs add as parties defendant, William P. Kellam
and P. B. White, who are sued in their capacities as state
officers representing the City of Virginia Beach in the House
of Delegates of the General Assembly of Virginia, and
whose duties, among others, is the proposal of amendments
to the Charter of the City of Virginia Beach.

III.

Paragraph C. (1) of the prayer of the original complaint
is amended to read as follows:

[fol. 31] "(1) That the defendant Councilmen, Commis-
sioner of Revenue and City Treasurer be permanently re-
strained and enjoined from assessing and collecting taxes,
selling bonds or appropriating revenues therefrom until a

[File endorsement omitted]

constitutionally representative City Council be constituted, but that the force and effect of said injunction be stayed for a period of three months from the date of entry of this Court's decree to enable the defendant members of the City Council of Virginia Beach and the defendant State Legislators from the City of Virginia Beach to obtain such changes in the Charter of said city so as to reconstitute a constitutional City Council and that promptly upon the changes in said Charter that the defendant members of the Electoral Board be directed to hold elections to fill the Councilmanic offices of the constitutionally constituted Council not later than April 15, 1966."

J. E. Clayton Davis, Rolland D. Winter, Cornelius D. Scully and Howard W. Martin, By: Henry E. Howell, Jr., Of Counsel.

Duly sworn to by Henry E. Howell, Jr., jurat omitted in printing.

[fol. 32] Howell, Anninos & Daugherty, 808 Maritime Tower, Norfolk, Virginia, Counsel for Plaintiffs.

[fol. 35]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

Civil Action No. 4912

[Title omitted]

ANSWER TO AMENDED COMPLAINT—Filed April 19, 1965

For answer to the amended complaint the defendants, Frank A. Dusch, et als., adopt the answer filed on or about January 1, 1965, to the original complaint as if such answer were restated herein.

[File endorsement omitted]

Answering further, defendants William P. Kellam and P. B. White admit that they are now members of the General Assembly of Virginia elected from the 56th District, comprising the City of Virginia Beach, but deny that their duties include the proposal of amendments to the charter of the City of Virginia Beach or any other city. Any one of the one hundred members of the House of Delegates or the forty members of the Senate have the same authority to propose amendments to the charter of Virginia Beach or any other city in the Commonwealth. Accordingly, these defendants request that the amended complaint be dismissed as to them.

All defendants renew the prayer to the answer to the original complaint and pray further the relief sought by [fol. 36] paragraph C(1) of the prayer of the amended complaint also be denied.

Frank A. Dusch, John McCombs, Edward T. Caton, III, W. H. Kitchin, Jr., L. S. Hodges, S. Paul Brown, Swindell Pollock, Kenneth N. Whitehurst, Lawrence E. Marshall, James Darden, Earl Teabult, John B. James, Harry Bailey, Joseph T. Crosswhite, Sr., V. Alfred Etheridge, Ivan D. Mapp, William P. Kellam and P. B. White, Harry Frazier III, Counsel for Defendants.

George W. Vakos, 201 Courthouse Drive, Princess Anne Station, Virginia Beach, Virginia 23456.

Archibald G. Robertson, Harry Frazier, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212.

Certificate of Service (omitted in printing).

[fol. 37]

IN THE
SUPREME COURT OF APPEALS OF VIRGINIA
AT RICHMOND

J. E. CLAYTON DAVIS, et al., etc.,

v.

FRANK A. DUSCH, et al., etc.

Record No. 5928

Petition for Writ of Mandamus

[fol. 38]

TRANSCRIPT OF DEPOSITIONS—June 8, 1964

[fol. 39] ROBERT FITZHUGH NEWSOME, witness first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

Direct examination.

Examined by Mr. Howell:

Q. State your full name, sir.

A. Robert Fitzhugh Newsome.

Q. And what position do you hold with the City of Virginia Beach?

A. I am the Economist on the Professional Staff of the Planning Commission.

Q. Can you state, by borough, the population figures allocated to each borough by the official 1960 census?

A. Yes, I can.

1960 Census Figures By Borough in the City of Virginia Beach:

[fol. 40]

Virginia Beach Borough	8,091
Lynnhaven Borough	23,731
Bayside Borough	28,045
Kempsville Borough	13,900
Princess Anne Borough	7,211
Pungo Borough	2,504
Blackwater Borough	733

Q. The figures you gave for the Bayside District or Borough was what?

A. 28,045.

Q. Mr. Newsome, I want to direct your attention to Table No. 7, page 16 of the United States Census, Population for 1960, and ask you if you are acquainted with the asterisk as shown for the revised population of the Bayside District?

A. Yes, I am aware of that.

Q. What was the actual devised population for the Bayside District?

A. The revised Bayside District was 29,048.

Q. Is that the actual count that is assigned to Bayside as the final tabulation of inhabitants?

A. That is the final United States Census figure.

Q. Have you projected a figure for these various boroughs or districts in Virginia Beach so as to reflect the figures as of the current year?

A. I have as of 1 January 1964.

Q. And would you state the basis of your projection?

A. The basis of the projection is beginning from the 1960 [fol. 41] census, from which I extrapolated by borough the 1960 population count and the 1960 count of dwelling units, coming up with the figure of the number of persons per dwelling unit in each of the boroughs.

Using this as a basis, an actual count of building permits for dwelling units was made by boroughs.

This figure was multiplied by the number of persons per dwelling unit, and added on to the 1960 census figure.

Q. Would you relate the population in the respective boroughs as of January 1, 1964 as arrived at by yourself?

A. Yes, sir.

Virginia Beach Borough	10,473
Lynnhaven Borough	37,760
Bayside Borough	36,027
Kempsville Borough	22,254.
Princess Anne Borough	7,957
Pungo Borough	2,806
Blackwater Borough	862

[fol. 42] IVAN DOUGHTY MAPP, witness first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

Direct examination.

Examined by Mr. Howell:

Q. State your full name and the position that you hold with the City of Virginia Beach.

A. Ivan Doughty Mapp, Commissioner of Revenue of the City of Virginia Beach.

Q. Mr. Mapp, referring to Blackwater District, what is the value of real property in Blackwater District that was assessed by your office?

[fol. 43] A: \$1,381,008, Blackwater Borough.

Q. I notice on the opposite page of the particular record that you have brought from your office, it shows it is headed

up, "Distribution by Districts of Values and County and District Levies," and it has a value figure total, \$829,540.

What is that value? What does that value figure reflect?

A. It looks like it is the total land and building assessments, and of course, I don't think this includes the colored.

These figures over here are the totals. I think I gave you a little incorrect figure.

It is \$1,381,908, the total. That is white and colored.

Mr. Howell: Let me see it, please.

(Mr. Mapp hands paper to Mr. Howell.)

At this point, we are going to identify and offer in evidence this compilation by districts and distribution by districts of the real property assessments with the understanding that if the Planning Commission, which has a process for photostating large maps, if they cannot reproduce this for the office of the Commissioner of Revenue that we will take it in to Butler Blueprint and have it reproduced, and the original will be returned to the Commissioner's office; or if the Commissioner does not want to transport that through myself, then one of his deputies could take it to Butler and stay with it until he brings it back.

Q. And we ask for Mr. Mapp to identify what the page, which I will designate as "Page 1 for identification," what does page 1 attempt to reflect?

A. It is the distribution by districts of the values of county and district levies.

They were used when we were accounted and we are still using them to save money.

Q. And you have adapted the particular column captions by typing in the titles appropriate to the City of Virginia Beach?

A. That is right.

Q. What does page #2 reflect?

A. This is the general recapitulation of values of tracts of lands and lots not incorporated in towns, and standing

[fol. 44] timber trees, mineral lands, minerals, buildings, and improvements; and county and district levies assessed thereto for the tax year 1964.

That is the new assessment.

Mr. Howell; We offer, subject to the objection of the Defendants, we offer this as "Petitioner's Exhibit #2," and ask that it be so marked at this time.

Q. Mr. Mapp, I notice that on page #1 of "Petitioner's Exhibit #2," it does have land slots for white and land slots and so forth for colored, and they represent a total of \$829,540, as compared with the figure of \$1,381,000 odd dollars, as shown on the summary of page #2 of "Petitioner's Exhibit #1."

Just so we won't have this small gap unanswered for Court purposes, I wonder if you can possibly account for that?

A. No, sir, I cannot. I haven't gone over it with the people in the office who made *ths*. I am sure they have a reason for it.

Q. Referring to page #1 of "Petitioner's Exhibit #2," does this constitute assessed value?

A. Yes, sir.

Q. On which tax rate is based?

A. Yes, sir.

Q. Is the tax rate for real property the same in each one of the districts?

A. No, sir, not in all rates are the tax rates the same. Some of the rates are the same.

Q. Would you take the districts by name, starting as they are on page #1, and tell us the rate and if there is a difference, the reason for the difference?

A. Well, the general fund rate—

Q. Take it district by district if you will, and tell us the tax.

A. Blackwater general fund rate is 44¢. The school operating fund gets 85¢. The general city gets 16¢, and the school six borough gets 30¢.

Q. Explain the six borough debt.

A. That is bond issues that were floated for the whole city, citywide.

[fol. 45] Q. All lands are assessed at the same rate?

A. Yes. The assessment is equal in all boroughs.

Q. The assessment is on what basis?

A. 36% of 90.

Q. 36% of the fair market value?

A. 36% of the 90%, fair market value.

Q. I notice in some of the districts we have Bayside, and then we have Bayside MOS, and I understand that stands for Mosquito district?

A. Yes, sir.

Q. Will you give us the details?

A. There are certain areas in Bayside the people have not requested for mosquito control, and those people, of course, are not assessed with the extra cost of mosquito control.

Certain people in certain areas have requested mosquito control, so we put those in mosquito control areas.

Q. Do I gather that the people that are in the mosquito area, are they people living in Bayside, do they get in the mosquito area unless they write and request to get out?

A. Petition the Council.

Q. Do they petition to get in or get out?

A. To get in.

[fol. 46] Q. And when we say a total?

A. Here's the rate, a 10¢ levy.

Q. And they pay 10¢ more than those people who are not in the mosquito district?

A. Yes, sir.

Q. I don't want to unduly clutter the record. I will just take Bayside Mosquito District, on page #1 of "Petitioner's Exhibit #2," and we see that the value of the land is \$45,072,440, is that right, sir?

A. That is right.

Q. What does that represent? Is that the fair market value of that land?

A. 36% of 90%, lands and buildings.

Q. And these various columns, such as general debt?

A. That is how much money that brings in, that 44¢ rate.

Q. That brings in \$198,318.74 which the citizens in Bayside Mosquito District contribute to the general debt?

A. Yes, sir.

Q. And then the next column, city operation, \$383,000?

A. City schools.

Q. They contribute \$383,115.74 of actual monies to the city schools?

A. Yes, sir.

Q. And the next column is general city debt. They contribute, that particular Bayside Mosquito District contributes \$72,115.90?

A. Yes, sir.

Q. And the six borough school debt, they contribute \$135,217.32?

And then the next column is total county levies. That, I assume, is a total of these first four columns?

A. Yes, sir.

Q. And that is \$788,767.70 that was collected from this particular Bayside Mosquito District, is that right?

A. Yes, sir. There is mosquito control and there are two special assessments of 20¢ each.

Mr. Dodd can tell you what it is.

Q. I see.

A. One is 25, one 35.

Q. In addition to this sum of \$788,767, they paid \$45,072.44?

[fol. 47] A. Yes, sir.

Q. And there are special assessments shown at the rate of 25¢ and 35¢?

A. Yes, sir. That is a tax rate of \$2.10.

Q. And in the last column, we pick up the total tax rate for special as well as regular assessments, and for Blackwater it is \$1.90.

Bayside is how much? Bayside.

A. \$2.00.

Q. Bayside Mosquito District?

A. \$2.10.

Q. Kempsville?

A. \$2.00.

Q. Kempsville Mosquito District?

A. \$2.10.

Q. Lynnhaven?

A. \$2.00.

Q. Lynnhaven Mosquito?

A. \$2.10.

Q. And this Norfolk-Virginia Beach Sanitary?

A. \$2.20.

Q. Where would we find the Virginia Beach?

A. I guess that is over at the office.

Q. Do you think you could have someone get that for you?

A. Yes, sir. I will make a phone call. Excuse me.

(Witness leaves courtroom and returns in 5 minutes.)

Q. All right, sir, you now have?

A. Virginia Beach Borough, Pango and Princess Anne Borough.

Q. Princess Anne Borough has a portion in the Mosquito District and a portion out of the Mosquito District, doesn't it?

A. Yes, sir.

Q. The portion without the Mosquito District has a portion of \$1.80 levy. That is the lowest in the whole city?

A. It appears to be.

Q. Do you know why that is the lowest?

A. Because, I imagine, it doesn't have any old debts. They paid out their old debts, probably.

- Q. Blackwater has some old debts?
 [fol. 48] A. No, sir, evidently not.
 Q. Blackwater doesn't have any old debts?
 A. They have a couple of special rates here. 15¢ here and Princess Anne only has a 5¢ rate.
 Q. You don't know what those rates are?
 A. No, sir. Mr. Dodd knows.

Mr. Howell: We now offer into evidence as "Petitioner's Exhibit #3" the continuation of the Assessment Sheets, which will reflect the monies collected from Princess Anne and Princess Anne Mosquito District, Pungo and Virginia Beach, and ask that it be marked now as "Petitioner's Exhibit #3." (So marked.)

.

[fol. 49]. GILES GLASS DODD, witness first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

Direct examination.

.

Q. Mr. Dodd, state your full name and the position you hold with the City of Virginia Beach.

A. My name is Giles Glass Dodd, and I am Director of Finance of the City of Virginia Beach.

.

[fol. 50] A. You want me to give you what the tax levy will produce in each of these boroughs?

Q. Yes.

A. This is the real estate in Blackwater Borough. We anticipate \$15,761.26.

Bayside	\$24,328.80
Bayside Mosquito	946,521.24
Kempsville	70,964.40
Kempsville Mos.	636,164.10

Lynnhaven	85,400.40
Lynnhaven Mosquito	1,156,616.16
North Va. Beach	229,414.46
Princess Anne	98,017.20
Princess Anne Mos.	16,933.18
Pungo	47,460.60
Virginia Beach	817,440.70

Q. Do you have a Virginia Beach special?

A. This was the tax in the Virginia Beach Borough.

Q. For the record, so that the record will be complete, Mr. Dodd, we see on page #1 of "Petitioner's Exhibit #2" a column headed up, "Special," and they have a rate of 15¢ for Blackwater.

Do you know what that particular levy is for?
[fol. 51] A. Yes, sir. That levy is to make a contribution to the Volunteer Fire Department.

Q. All right, sir, and then in Bayside we have a special levy of 25¢. What is the purpose of this?

A. That includes several things. It includes the contribution to the Volunteer Fire Department in Bayside. It is for garbage service, and it pays the OAS employer's cost, Old Age and Survivor's Insurance costs for the sanitary employees.

Q. And Bayside Mosquito, we find the same rate for the same purpose?

A. Yes, sir.

Q. And wherever we see 25¢ in this special column, it is for the same purpose?

A. That is correct.

Q. North Virginia Beach appears to be the only borough that has a special levy of 10¢, and this is 10¢ per what? Per \$100.00? What is that 10¢ based on?

A. That is correct.

Q. 10¢ per \$100.00?

A. Yes, sir, for sanitation.

Q. Explain that to us.

A. Sanitary, is that what you are looking at?

Q. North Virginia Beach, under sanitation that is 10¢.

A. That is for the payment of principle and interest on some debt which existed under the old county there, the sanitary debt.

Q. Now, I notice that Princess Anne Borough has a 5¢ levy for special. What is that special levy?

A. That is for a contribution to the Volunteer Fire Department, and they have some garbage removal.

Q. How do they get it for a nickel and it costs Blackwater 15¢.

A. Mr. Howell, I assume that their assessments are high enough so that the rate need not be any higher than 5¢.

Q. I thought the assessments were uniform?

A. The assessments are, but the rates are not.

Q. What is the rate for Blackwater?

A. The rate for Blackwater for this same purpose, well, not for the same purpose,—

Q. What is the rate on there?

A. \$1.90.

[fol. 52] Q. And for Princess Anne, it is what?

A. \$1.80.

Q. Take a look, if you will.

You see that the rate for total county levies for Blackwater, as shown, is \$1.75, and for Princess Anne it is shown as \$1.75.

Blackwater's total levies increase to \$1.90 because they have a 15¢ per \$100.00 special assessment for Volunteer Fire Department?

A. That is right.

Q. Princess Anne's increase is a nickel for the Volunteer Fire Department, so naturally, adding a nickel to the \$1.75 would get \$1.80, and adding 15¢ to the \$1.75 will get \$1.90.

A. The point I am making over here in Blackwater, you have the assessed value of \$829,000, and in Princess Anne you have assessed \$5,483,900.

So, if you take your cost in Blackwater—

Q. You mean the smaller the land area, the more will be the rate for Volunteer Fire Services, and vice versa?

A. All other things being equal, yes.

Q. And Blackwater, I don't quite understand this, Mr. Dodd, Blackwater has 31 square miles of area, according to the land use map prepared by the Virginia Beach Planning Commission, and that land is valued at, or its assessed valuation is \$829,540.

Princess Anne has 61 square miles, and apparently it has an assessed valuation of \$5,483,900. Is that right?

A. Yes.

Q. These columns don't include pennies; rounded off to dollars?

A. That is right.

Q. Can you account for Princess Anne having five times the assessed valuation of Blackwater if the lands are all assessed at the same rate and they only have twice as much land area?

A. Mr. Howell, I don't know how these assessors go about assessing these lands, but I would assume you would have different values depending on the usage of the land.

Q. All right, sir.

I notice that the people living within the Kempsville Mosquito Control District, they have an assessed land of \$30,000,000, and they pay 25¢ for the Volunteer Fire Department and garbage collection.

[fol. 53] Do you know why they have to pay so much more than Princess Anne? Princess Anne only pays a nickel which includes Volunteer Fire Service and some garbage service.

I followed you when you said what you said about Blackwater, but do you know why there is so much difference between Bayside and Princess Anne?

A. There again, I would have to assume that in Kempsville, I don't imagine that your density of population is much greater, and a larger percentage of your costs would be expended in Kempsville than it would be in Princess Anne.

Q. And the same thing for Bayside and Lynnhaven?

A. Yes, sir.

Q. This Virginia Beach Borough, it has \$1.48 special rate. Do you know what portion of that goes for fire service?

A. No, sir, I couldn't tell you, but they have, in addition to fire service and garbage collection, they have some debt that is retired at \$1.48. It was a debt for the old City of Virginia Beach before the merger.

Q. They have two. They have 7¢ rate for mosquito control, and \$1.48 for a number of factors, including fire, garbage, and debt retirement of a preexisting debt?

A. That is right.

Q. Now, do you have any way of knowing how much revenue you get from personal property taxes in the various districts?

A. No, sir.

[fol. 54] SIDNEY S. KELLAM, called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows:

Examined by Mr. Frazier:

Q. Would you please state your name, your residence and your occupation?

A. My name is Sidney S. Kellam. I live at 510 Cavalier Drive, Virginia Beach. My occupation is insurance.

[fol. 55] Q. Mr. Kellam, have you lived in Virginia Beach or Princess Anne County all your life?

A. All my life.

Q. Did you occupy any position in connection with a Study Committee appointed to explore the matter of merger of the City of Virginia Beach and Princess Anne County?

A. Yes, I did. I was co-chairman of that committee.

[fol. 56] Cross examination.

By Mr. Howell:

Q. Mr. Kellam, the principal motivating factor for this committee being formed in 1961 was to protect Princess Anne County from further annexations by the City of Norfolk, is that a fair statement?

A. Well, that was the immediate—probably the rush for the committee being formed; but on a long-range program that was not the—not all of the reasoning. Virginia Beach was a very small city at that time. It had to expand and it had to go out into Princess Anne County. Bayside District was larger than practically any city in the State of Virginia with the exception of about the first 10 or 12. So was Lynnhaven District; and so was Kempsville District. And so we thought it would be far better, we would have a more simplified government and a more economical government if they were united.

Q. But you would not have done it so quickly if it hadn't been—

A. Well, it was probably under the gun of the annexation that maybe brought it to the head, that maybe might have been six months later.

[fol. 57] Q. You said that one of the considerations of this committee was to give the people in each area the rights they should have. That was your phrase?

A. Yes.

Q. What rights do you think the people in Bayside should have, for example?

A. Well, I think, by and large, the people in Bayside should have the rights to govern their borough so long as those things which they desire and need do not take away from you or place a burden on someone living in another borough. And being half urban and half rural, they were the things that we had to consider.

Q. Was there anything half rural and half urban about—you mean all of these three major boroughs?

A. No, sir. I am talking about the County of Princess Anne.

Q. The County of Princess Anne?

A. Yes, sir.

Q. Kempsville is primarily an urban borough, isn't it?

A. Well, no, Kemp—yes, urban, yes. So is Bayside. So is Lynnhaven.

Q. Those three are primarily of an urban nature?

A. That is right.

Q. Now, when you say you felt that the people of Bayville should have a right to govern their own borough, do they have an intraborough council that they sit on and carry out governmental functions just for Bayville under this present charter?

A. Bayside.

Q. Bayside.

[fol. 58] A. Oh, no. They have an elected member of the council from the borough and he is elected by the people of Bayside Borough.

Q. So there is only one council and that is the Council of the City of Virginia Beach?

A. That is right.

Q. And the only thing that the people of the Borough of Bayside can get is that which the majority of the Council of the City of Virginia Beach deems best for the City of Virginia Beach and the Borough of Bayside?

A. That is right. But the representative from the Borough of Bayside knows better what the needs of his borough is; and so long as they do not conflict with the borough of another—such as Lynnhaven—there would be no reason why they shouldn't have it.

Q. Now, let's detail as finitely as possible what the committee felt were the rights that the citizens in the various boroughs should have. You said that the motivating purpose was to give the people in each area the rights they should

have. I want to make sure that we know just what those rights were that you all were trying to give to the people.

A. Well, Mr. Howell, as I have just mentioned, Bayside Borough, as an example, has a garbage collection because it is an urban area. Pungo Borough does not have it. The people of Bayside Borough pay for it and pay for it themselves. It does not cost the citizens of Pungo Borough one penny. And they were the things that—if the people in the Bayside Borough wanted them and needed them for good, sensible living, then they should have it.

Q. All right. So that is the rights you are talking about?

A. That is the rights we are talking about.

Q. In other words, the right for Bayside if they want garbage service, to pay for it without requiring it to be a responsibility of the City as a whole, is that right, sir?

A. That is right, sir.

Q. Well now, what were those services that you felt that the City of Virginia Beach as a whole should provide in which the tax monies of the people of Bayside should help to support the entire city?

A. Well, that—as an example, they have a uniform tax for schools. They have a uniform tax for county government such as the courts, officials, police protection.

[fol. 59] Q. All right, sir. I suppose you realized when you were forming this that the total taxation that would be realized from real estate in all of Virginia Beach was roughly \$4,145,000.00? Did your committee have any idea of how much in taxes would be raised from the real estate of the various citizens?

A. Well, of course, we couldn't know what the Council may levy in the way of a tax rate at some other year.

Q. Well, it has changed since January 1, 1963, has it?

A. I don't think so, no, sir.

Q. So you all did know when you were working on this thing in '61 that probably there would be about \$4,000,000.00 raised from real estate taxes?

A. You are probably correct.

Q. And did you all know that of that \$4,000,000.00 that \$3,149,000.00 would come from these three urban areas of Bayside, Kempsville and Lynnhaven?

A. Well, they were coming from it before we had this merger.

Q. I understand that.

A. We made no change in that.

Q. Did you likewise realize that as of January 1, 1960, these three urban districts of Bayside, Kempsville and Lynnhaven had roughly 78 percent of the total population of the City of Virginia Beach?

A. Yes, sir, we realized it and that was one of the reasons for which we wanted to have a merger.

[fol. 60] Q. The Pungo man could vote to—that is primarily a rural area, isn't it?

A. That is right.

Q. Mostly farms in Pungo. He could vote a 10 percent [fol. 61] sales tax on restaurants and hotels and there wouldn't be a thing in the world that the voter in Bayside could do about it when the Pungo man came up for re-election the next time?

A. Well, that is true in any city that has ward districts, isn't it?

Q. But you are rather conversant with the code. You know that the code requires that there be approximately an equal number of inhabitants within each ward?

Q. Mr. Kellam, are you familiar with the fact that the Code of the State of Virginia requires—

A. If you say so I am sure it is correct.

[fol. 62]

CONSOLIDATION AGREEMENT FOR THE CITY OF VIRGINIA BEACH AND PRINCESS ANNE COUNTY, VIRGINIA

THIS CONSOLIDATION AGREEMENT is made in several counterparts this 10th day of November, 1961, by and between the governing bodies of the CITY OF VIRGINIA BEACH, a municipal corporation of the Commonwealth of Virginia, and PRINCESS ANNE COUNTY, a county in the Commonwealth of Virginia. The governing bodies of the city and the county hereby declare that it is in the best interest of the city and the county to consolidate into a city pursuant to Article 4, Chapter 9, Title 15 of the Code of Virginia of 1950, as amended, and in order to effect such consolidation the governing bodies of the city and the county hereby agree as follows:

I. NAMES OF CITY AND COUNTY PROPOSING TO CONSOLIDATE

The names of the city and county proposing to consolidate are City of Virginia Beach and Princess Anne County.

II. NAME OF CONSOLIDATED CITY

The name of the city into which it is proposed to consolidate is City of Virginia Beach.

III. PROPERTY AND VALUE

The property, real and personal, belonging to the City of Virginia Beach and Princess Anne County and the fair value thereof in current money of the United States is as follows:

[fol. 63]

	<i>City of Virginia Beach</i>	<i>Princess Anne County</i>
Real Estate	\$2,719,590	\$20,522,046
Personal Property	3,168,550	1,740,450
Total	<u>\$5,888,140</u>	<u>\$22,262,496</u>

IV. INDEBTEDNESS OF UNITS

The indebtedness, bonded and otherwise, of the City of Virginia Beach and Princess Anne County is as follows:

	<i>City of Virginia Beach</i>	<i>Princess Anne County</i>
General Bonded Debt	\$3,053,000.00	\$7,413,924.80
North Virginia Beach Sanitary District	—	34,000.00
Kempsville and Bayside Magisterial Districts	—	443,562.00
Pungo Magisterial District	—	48,000.00
Total	<u>\$3,053,000.00</u>	<u>\$7,939,486.80</u>

(Figures do not include interest in future years.)

V. SOURCE OF VALUATIONS AND DEBTS

The above valuations were established by the City of Virginia Beach for property and indebtedness of the city and by Princess Anne County for property and indebtedness of the county, and such valuations are accepted by the city and county solely for the purposes of this agreement.

VI. EFFECTIVE DATE

Subject to the outcome of the referendum provided for in paragraph VII hereof and subject to approval by the General Assembly of Virginia of an amended charter for the City of Virginia Beach as hereinafter provided, the consolidation shall become effective on January 1, 1963.

VII. REFERENDUM

1. As soon as practicable following the execution hereof, the governing bodies of the City of Virginia Beach and Princess Anne County shall file with one of the judges of the Circuit Court of Princess Anne County the original of this consolidation agreement, together with a petition on behalf of such governing bodies, signed by the chairman and clerk of each such bodies, asking that a referendum on the question of the consolidation herein provided for be ordered to be held at a special election within the city and the county pursuant to Article 4, Chapter 9, of Title 15 of the Code of Virginia of 1950, as amended, on January 4, 1962, or on such other date as may be fixed by the Court. Thereafter, the governing bodies of the city and county shall cause a copy of this consolidation agreement to be printed at least once a week for four successive weeks in some newspaper having a general circulation in the city and county.

2. If this consolidation receives an affirmative vote by a majority of the qualified voters voting in the referendum in the City of Virginia Beach and a majority of the qualified voters voting in the referendum in Princess Anne County, then the governing bodies of the City of Virginia Beach and Princess Anne County shall submit an amended charter for the City of Virginia Beach in substantially the [fol. 65] form annexed hereto to the 1962 session of the General Assembly of Virginia and shall urge its adoption. Such governing bodies shall have authority to agree to such revisions in the charter that may be proposed by the General Assembly.

VIII. DISPOSITION OF PROPERTY AND ASSUMPTION OF DEBTS

1. Upon the effective date of consolidation all property, real and personal, of Princess Anne County, including any sanitary districts therein, shall become the property of the City of Virginia Beach, and any and all indebtedness and other obligations of the county, including all magisterial and sanitary districts therein, shall be assumed by the City of Virginia Beach.

2. The areas comprising the City of Virginia Beach, Princess Anne County, North Virginia Beach Sanitary District, and Bayside, Kempsville and Pungo Magisterial Districts on the effective date of consolidation shall be continued in effect as special taxing districts for a period of not more than 20 years for the purpose of repaying any indebtedness chargeable to such areas. The council of the consolidated City of Virginia Beach shall levy a special tax on real property within such districts in such amount as may be necessary to repay such indebtedness, to the end that all indebtedness existing on the effective date of consolidation shall be repaid by the area creating the indebtedness.

3. From the date of this agreement until the effective date of consolidation neither the present City of Virginia [Vol. 66] Beach nor Princess Anne County, or any magisterial or sanitary district therein, shall issue any bonds which shall not mature on or before 20 years after the effective date of consolidation, unless the issuance of such bonds shall have been approved by the Council of the present City of Virginia Beach and by the Board of Supervisors of Princess Anne County.

IX. BOROUGHES AND ELECTIONS

1. The present City of Virginia Beach and the six present magisterial districts of Princess Anne County shall become boroughs of the consolidated City of Virginia

Beach which shall be known by the following names, i.e., Virginia Beach, Bayside, Blackwater, Kempsville, Lynnhaven, Princess Anne (formerly known as Seaboard) and Pungo, respectively.

2. The council shall consist of eleven members, five to be elected from the borough of Virginia Beach and one from each of the other six boroughs. At such time as may be determined by the affirmative vote of seven councilmen, which shall not be earlier than five years after the effective date of consolidation but not later than September 1, 1971, the council shall submit to the qualified voters of the city a new plan for election of councilmen.

3. The initial council shall consist of the five members of the council of the City of Virginia Beach and the six members of the Board of Supervisors of Princess Anne County in office on the effective date of consolidation who shall hold office until the beginning of the terms of their successors. Councilmen in each borough shall be elected in [fol. 67] the same manner and for the same terms as councilmen or supervisors were elected in such borough immediately preceding the effective date of consolidation; provided, however, that the three councilmen of the present City of Virginia Beach elected in June 1962 shall serve until September 1, 1967. Two councilmen from the Borough of Virginia Beach shall be elected in June 1964 and shall serve until September 1, 1967. All other councilmen shall be elected in June 1963 and shall serve until September 1, 1967. Beginning in 1967 all councilmen shall be elected on the second Tuesday in June for terms of four years and shall take office on the first day of September following their election.

X. CONSTITUTIONAL OFFICERS

1. Upon the effective date of consolidation the constitutional officers of the city and the county shall continue in office for the full terms to which they were elected.

2. The sheriff of Princess Anne County and the present City of Virginia Beach shall continue to perform the same duties during the remainder of the term to which he was elected. From and after January 1, 1964, the consolidated City of Virginia Beach shall have a sergeant who shall be elected in lieu of a sheriff. No election shall be held in the present City of Virginia Beach to elect a sergeant for the term beginning January 1, 1963, but the sergeant of the present City of Virginia Beach shall become the high constable of the consolidated City of Virginia Beach and shall serve at the pleasure of the council. He shall perform such [fol. 68] of the duties now performed by the sergeant of the present City of Virginia Beach and such other duties as the council may prescribe.

3. The treasurer and the commissioner of revenue for the consolidated city shall be determined by agreement between those persons holding such respective offices. In the event that no agreement is reached before the effective date of consolidation, the Circuit Court of Princess Anne County shall designate one officer as principal and the other as deputy.

4. The salaries of the constitutional officers shall not be diminished during the remainder of the terms to which they were elected.

XI. MUNICIPAL SEAT OF GOVERNMENT

The municipal seat of government shall be located at the present county seat of Princess Anne. Offices for municipal services shall be maintained at the city hall in the present City of Virginia Beach for the convenience of citizens.

XII. HIGHER TAXES FOR ADDITIONAL SERVICES

The council of the City of Virginia Beach shall have power to levy a higher tax in such areas of the city as de-

sire additional or more complete services of government than are desired in the city as a whole, provided that such higher tax rate shall not be levied for school, police or general government services but only for those services which prior to consolidation were not offered in the whole of the city and the county. The proceeds of such tax shall be segregated and expended in the areas in which collected.

XIII. PREPARATION OF 1962-63 BUDGETS

1. The city and the county shall prepare and adopt separate budgets for the fiscal year July 1, 1962-June 30, 1963, in accordance with present practices on the assumption that each would operate independently for the entire fiscal year. Before January 1, 1963, the city and county budgets shall be consolidated into a single budget under which the consolidated City of Virginia Beach shall operate from January 1 through June 30, 1963.

2. All funds from the issue of bonds by the city or the county, the use of which is restricted by the terms thereof, shall be set aside in a special fund for disposition in accordance with such requirements.

XIV. PERSONNEL PAY AND RETIREMENT BENEFITS

1. In order to carry on an efficient administration, the City of Virginia Beach will need the experience and skills of the employees of both the city and the county. Therefore, it is agreed that the city will adhere to the principle that all employees of the two governmental units will be retained and will be compensated at no lower rate of pay than they received at the effective date of consolidation and that they will occupy positions as comparable as practicable to those occupied at the time of consolidation.

2. The obligation of the present City of Virginia Beach under its existing pension plan for the police and fire de-

[fol. 70] partments on the effective date of consolidation shall become the indebtedness and obligation of the consolidated City of Virginia Beach. The consolidation agreement shall be deemed an agreement between the consolidated City of Virginia Beach and the employees and retired employees having vested rights covered by such pension plan on the date of consolidation to the end that the rights and equities of employees and retired employees under such pension plan shall not be diminished, curtailed or impaired in any way. From and after the effective date of consolidation such pension plan shall be continued in effect for the exclusive benefit of such employees and retired employees having vested rights thereunder and for no others.

3. All other employees and retired employees of the present City of Virginia Beach and all employees and retired employees of Princess Anne County having vested rights under any retirement plan of the city or county on the effective date of consolidation shall continue to be covered by such plan. The consolidation agreement shall be deemed an agreement between the consolidated city of Virginia Beach and such employees and retired employees that in the event that the consolidated City of Virginia Beach shall combine, consolidate or amend any such retirement plan, such action shall not in any way diminish, curtail or impair the vested rights of any such employees or retired employees.

XV. SCHOOLS

For the safety and welfare of the school children the school board of the City of Virginia Beach shall continue [fol. 71] substantially the school bus service formerly maintained in Princess Anne County, unless in the opinion of the school board, considering various factors including increased density of population, availability of school facilities, changes in traffic patterns and availability of public

transportation, such services or any part thereof should be altered or discontinued.

IN WITNESS WHEREOF, the Council of the City of Virginia Beach and the Board of Supervisors of Princess Anne County have entered into this consolidation agreement and the city and county have caused this consolidation agreement to be executed in their respective names and their respective seals to be hereunto affixed and attested by their respective officers thereunto duly authorized.

CITY OF VIRGINIA BEACH

By _____
Mayor

Attest:

Clerk

PRINCESS ANNE COUNTY

By _____
Chairman
Board of Supervisors

Attest:

Clerk

[fol. 72]

CHAPTER 147

An Act to effectuate the consolidation of Princess Anne County and the city of Virginia Beach, a city of the second class, into the city of Virginia Beach, a city of the first class; and to this end to validate, ratify and confirm the consolidation agreement between Princess Anne County and the city of Virginia Beach; to provide

a charter for the new city of Virginia Beach, and to repeal Chapter 33 of the Acts of Assembly of 1952, approved February 14, 1952, which incorporated the city of Virginia Beach, and all amendments thereto.

[H 107]

Approved February 28, 1962

Be it enacted by the General Assembly of Virginia:

1. The consolidation of the city of Virginia Beach and Princess Anne County into the consolidated city of Virginia Beach, a city of the first class, as provided in the consolidation agreement to which reference is hereby made and which is made part hereof, is hereby validated, ratified and confirmed in all respects and such consolidation shall be effective on and after January one, nineteen hundred sixty-three.

2. Chapter 33 of the Acts of Assembly of 1952 and all amendments thereto, which is entitled "An act to incorporate the city of Virginia Beach; and to repeal Chapter 76 of the Acts of Assembly 1906, approved March 6, 1906, which incorporated the town of Virginia Beach, and all amendments thereto", approved February 14, 1952, is repealed as of the first moment of January one, nineteen hundred sixty-three.

3. Be it further enacted by the General Assembly of Virginia:

Chapter 1

INCORPORATION AND BOUNDARIES

§ 1.01. INCORPORATION. The inhabitants of the territory comprised within the limits of the City of Virginia Beach, as they are or hereafter may be established by law, shall continue to be a body politic and corporate under the name of the City of Virginia Beach and as such shall have perpetual succession, may sue and be sued, contract and be contracted with and may have a corporate seal which

it may alter at its pleasure. The inhabitants of the territory comprised within the limits of Princess Anne County as it exists at the effective date of this charter shall also be a part of such body politic and corporate.

§ 1.02. BOUNDARIES. The boundaries of the City of Virginia Beach shall coincide with the outside boundaries of Princess Anne County so as to include all of the territory comprising Princess Anne County and the City of Virginia Beach as existing immediately preceding the effective date of this charter.

Chapter 2

POWERS

§ 2.01. GENERAL GRANT OF POWERS. The powers set forth in §§ 15-77.1 through 15-77.70 of the Code of Virginia as in force on January 1, 1962, are hereby conferred on and vested in the City of Virginia Beach.

§ 2.02. ADDITIONAL POWERS. Without limiting the generality of the foregoing, but in addition thereto, the City of Virginia Beach shall have the following additional powers:

(a) To spend not exceeding five per cent of its annual revenue from all sources in advertisement of and giving publicity to its resources and advantages.

(b) To levy a higher tax in such areas of the City of [fol. 73] Virginia Beach as desire additional or more complete services of government than are desired in the city as a whole, provided that such higher tax rate shall not be levied for school, police or general government services but only for those services which prior to the effective date of this charter were not offered in all the territory within the boundaries of the city and provided further that the proceeds from such higher tax rate shall be so segregated as to enable the same to be expended in the areas in which raised.

(c) To levy a special tax on real property in any borough, sanitary district or other special taxing district or combination thereof, for a period of not exceeding 20 years, which may be different from and in addition to the general tax rate throughout the city, for the purpose of repaying indebtedness existing on the effective date of this charter and chargeable to such borough, sanitary district or other special taxing district or combination thereof.

(d) To exercise all powers possessed by the City of Virginia Beach and Princess Anne County immediately preceding the effective date of this charter, consistent with general law and not inconsistent with this charter; provided, however, that except as otherwise specifically provided in this charter, all laws heretofore applicable to Virginia Beach or Princess Anne County, respectively, shall continue to apply to the areas theretofore comprising such political subdivisions, now incorporated under this charter as a single such subdivision, until otherwise provided by law.

Chapter 3

CITY COUNCIL

§ 3.01. COMPOSITION. The city shall be divided into seven boroughs. One of such boroughs shall comprise the City of Virginia Beach as existing immediately preceding the effective date of this charter and shall be known as the borough of Virginia Beach, and the remaining six boroughs shall comprise the six magisterial districts of Princess Anne County as existing immediately preceding the effective date of this charter and shall be known as the boroughs of Bayside, Blackwater, Kempsville, Lynnhaven, Princess Anne (formerly known as Seaboard) and Pungo. The council shall consist of eleven members, five of whom shall be elected by and from the borough of Virginia Beach and one by and from each of the other six boroughs. The five members of the council of the City of Virginia Beach and the six members of the Board of Supervisors of Prin-

cess Anne County holding office immediately preceding the effective date of this charter shall constitute the council of the city and shall hold office until the beginning of the terms of their successors. At such time as may be determined by the affirmative vote of seven councilmen, which shall not be earlier than five years after the effective date of this charter but not later than September 1, 1971, the council shall submit to the qualified voters of the city a new plan for election of councilmen.

§ 3.02. ELECTION OF COUNCILMEN. Councilmen in each borough shall be elected in the same manner and for the same terms as councilmen or supervisors were elected in such borough immediately preceding the effective date of this charter; provided, however, that the three councilmen of the present City of Virginia Beach elected in June 1962 shall serve until September 1, 1967. Two councilmen from the borough of Virginia Beach shall be elected in June 1964 and shall serve until September 1, 1967. All other councilmen shall be elected in June 1963, and shall serve until September 1, 1967. Beginning in 1967 all councilmen shall be elected on the second Tuesday in June for terms of four years and shall take office on the first day of September following their election.

§ 3.03. FILLING VACANCIES. Vacancies in the office of councilmen, from whatever cause arising, shall be filled within 60 days for the unexpired portion of the term by a majority vote of the remaining members of the council, [fol. 74] provided that so long as any councilmen are elected by and from wards or boroughs the vacancy shall be filled by a qualified voter residing in the same ward or borough.

§ 3.04. COMPENSATION. Councilmen shall receive as compensation for their services such amounts as the council may determine, not to exceed \$200 per month for councilmen and \$250 per month for the mayor. No member of the council shall be appointed to any office of profit under the city government during the term for which elected and for one year thereafter.

§ 3.05. **POWERS.** All powers vested in the city shall be exercised by the council except as otherwise provided in this charter. In addition to the foregoing, the council shall have the following powers:

(a) To provide for the organization, conduct and operation of all departments, bureaus, divisions, boards, commissions, offices and agencies of the city.

(b) To create, alter or abolish departments, bureaus, divisions, boards, commissions, offices and agencies other than those specifically established by this charter.

(c) To create, alter or abolish and to assign and re-assign to departments, all bureaus, divisions, offices and agencies except where such bureaus, divisions, offices or agencies are specifically assigned by this charter.

(d) To provide for the number, titles, qualifications, powers, duties and compensation of all officers and employees of the city.

(e) To provide for the form of oaths and the amount and condition of surety bonds to be required of certain officers and employees of the City.

(f) To provide for the submission of any proposed ordinance to the qualified voters of the city at an advisory referendum to be initiated by a resolution to the circuit court of the city and held not less than 30 nor more than 60 days thereafter in the manner provided by law for general elections.

§ 3.06. **PROCEDURAL POWERS.** The council shall have power, subject to the provisions of this charter, to adopt its own rules of procedure. Such rules shall provide for the time and place of holding regular meetings of the council which shall be not less frequent than once each month. They shall also provide for the calling of special meetings by the mayor or any three members of the council and shall prescribe the methods of giving notice thereof. A majority of the council shall constitute a quorum for

the transaction of business. No ordinance, resolution, motion or vote, other than motions to adjourn, to fix the time and place of adjournment and other motions of a purely procedural nature, shall be adopted by the council except at a meeting open to the public.

§ 3.07. **MAYOR.** At its first regular meeting of the term the council shall choose by majority vote of all the members thereof one of its members to be mayor and one to be vice-mayor. Until such time as the representation on the council is changed as provided in § 3.01, one of such officers shall be a councilman elected by and from the borough of Virginia Beach and the other shall be a councilman elected by and from one of the other boroughs. The mayor shall preside over the meetings of the council, shall act as head of the city government for ceremonial purposes and shall have such other rights and duties as the council may prescribe, in addition to all the rights and privileges of councilmen of the city. The vice-mayor shall perform the duties of mayor in the absence or disability of the mayor.

§ 3.08. **CITY CLERK.** The council shall appoint a city clerk who shall serve at the pleasure of the council. He shall be clerk of the council and custodian of the corporate seal of the city and he shall have such further duties as the council may prescribe.

[fol. 75]

Chapter 4

CITY MANAGER

§ 4.01. **APPOINTMENT AND QUALIFICATIONS.** The council shall appoint a city manager who shall be the executive and administrative head of the city government. He shall be chosen solely on the basis of his executive and administrative qualifications and shall serve at the pleasure of the council.

§ 4.02. **POWERS AND DUTIES.** The city manager shall have the power and it shall be his duty:

(a) To appoint all officers and employees of the city and to remove such officers and employees, except as he may delegate such power to appoint and remove to his subordinates and except as otherwise provided in this charter.

(b) To perform such other duties and to exercise such other powers as may be imposed or conferred upon him by the council.

§ 4.03. COUNCIL NOT TO INTERFERE IN APPOINTMENTS OR REMOVALS. Neither the council nor any of its members shall direct the appointment of any person to or his removal from any office or employment by the city manager or by his subordinates.

Chapter 5

BUDGET

§ 5.01. FISCAL YEAR. The fiscal year of the city shall be established by ordinance and shall also constitute the tax year and the budget and accounting year.

§ 5.02. SUBMISSION OF BUDGET. The city manager shall submit to the council a budget and a budget message at least 90 days prior to the beginning of each budget year.

§ 5.03. PREPARATION OF BUDGET. It shall be the duty of the head of each department, the judges of the courts not of record, each board or commission, including the school board, and each other office or agency supported in whole or in part by the city, to file at such time as the city manager may prescribe estimates of revenue and expenditure for that department, court, board, commission, office or agency for the ensuing fiscal year. The city manager shall hold such hearings as he may deem advisable and shall review the estimates and other data pertinent to the preparation of the budget and make such revisions in such estimates as he may deem proper, subject to the laws of the Commonwealth relating to obligatory expendi-

tures for any purpose, except that in the case of the school board he may recommend a revision only in its total estimated expenditure. The budget shall be prepared in accordance with accepted principles of municipal accounting and budgetary procedures and techniques.

§ 5.04. **BALANCED BUDGET.** In no event shall the expenditures recommended by the city manager in the budget exceed the receipts estimated, taking into account the estimated cash surplus or deficit at the end of the current fiscal year, unless the city manager shall recommend an increase in the rate of ad-valorem taxes on real estate and tangible personal property or other new or increased taxes or licenses within the power of the city to levy and collect in the ensuing fiscal year the receipts from which estimated on the basis of the average experience with the same or similar taxes during the three tax years last past, will make up the difference. If estimated receipts exceed estimated expenditures the city manager may recommend revisions in the tax and license ordinances of the city in order to bring the budget into balance.

§ 5.05. **BUDGET MESSAGE.** The budget message shall contain the recommendations of the city manager concerning the fiscal policy of the city, a description of the important features of the budget and an explanation of all [fol. 76] significant changes in the budget as to estimated receipts and recommended expenditures as compared with the current and last preceding fiscal years.

§ 5.06. **APPROPRIATION AND ADDITIONAL TAX ORDINANCES.** At the same time that he submits the budget the city manager shall introduce and recommend to the council an appropriation ordinance which shall be based on the budget. He shall also introduce at the same time any ordinances levying a new tax or altering the rate on any existing tax necessary to balance the budget as provided in § 5.04.

§ 5.07. PUBLIC HEARING. The council shall hold a public hearing on the budget as submitted, at which all interested persons shall be given an opportunity to be heard. The council shall cause to be published a notice of the time and place of the hearing not less than seven days prior to the date of the hearing.

§ 5.08. ADOPTION OF BUDGET. After the public hearing the council may make such changes in the budget as it may determine, except that no item of expenditure for debt service shall be reduced or omitted. The budget shall be adopted by the vote of at least a majority of all members of the council not later than 30 days prior to the end of the current fiscal year. Should the council take no action prior to such day, the budget shall be deemed to have been finally adopted as submitted. In no event shall the council adopt a budget in which the estimated total of expenditures exceeds receipts, unless at the same time it adopts measures to provide additional revenue estimated to be sufficient to make up the difference.

§ 5.09. ADDITIONAL APPROPRIATIONS. Appropriations in addition to those contained in the general appropriation ordinance may be made by the council only if there is available in the general fund an unencumbered and unappropriated sum sufficient to meet such appropriations.

Chapter 6

BORROWING

§ 6.01. BORROWING POWER. The council may, in the name of and for the use of the city, incur indebtedness by issuing its negotiable bonds or notes for the purposes, in the manner and to the extent provided in this chapter.

§ 6.02. PURPOSES FOR WHICH BONDS OR NOTES MAY BE ISSUED. Bonds or notes of the city may be issued for the following purposes:

(a) To finance capital projects.—Bonds, and notes in anticipation of bonds when the issue of bonds has been authorized as hereinafter provided, may be issued for the purpose of financing the whole or any part of the cost of any capital improvement project.

(b) To anticipate the collection of revenue.—Notes may be issued, when authorized by the council, at any time during the fiscal year in anticipation of the collection of revenue of such year.

(c) To refund outstanding bonds.—Bonds may be issued for the purpose of refunding existing bonds, provided that the director of finance shall certify in writing that such refunding is necessary to prevent default on the interest or principal of the city's outstanding bonds or in the case of callable bonds to secure a lower rate of interest.

§ 6.03. LIMITATIONS ON INDEBTEDNESS. In the issuance of bonds and notes the city shall be subject to the limitations as to amount contained in Section 127 of the Constitution.

§ 6.04. FORM OF BONDS. Bonds and notes of the city shall be issued in the manner provided by general law.

§ 6.05. AUTHORITY FOR ISSUANCE OF BONDS. [fol. 77] No bonds of the city shall be issued until their issuance shall have been authorized by a majority of the qualified voters of the city voting at an election held for the purpose and in the manner provided by general law; provided, however, that the council may issue bonds in an amount not exceeding \$500,000 in any calendar year or notes in anticipation of the collection of revenue without submitting the question of their issuance to the qualified voters.

§ 6.06. PAYMENT OF BONDS AND NOTES. The power and obligation of the city to pay any and all bonds and notes issued pursuant to this charter, except revenue bonds made payable solely from revenue producing

properties, shall be unlimited and the city shall levy ad valorem taxes upon all taxable property within the city for the payment of such bonds or notes and the interest thereon, without limitation as to rate or amount. The full faith and credit of the city are hereby pledged for the payment of the principal of and interest on all bonds and notes of the City of Virginia Beach and of Princess Anne County and any sanitary districts therein issued and outstanding on the effective date of this charter, and of the city hereafter issued pursuant to this chapter, except revenue bonds made payable solely from revenue producing properties, whether or not such pledge be stated in the bonds or notes or in the bond ordinance authorizing their issuance.

Chapter 7

ADMINISTRATIVE DEPARTMENTS

§ 7.01. CREATION OF DEPARTMENTS. The following administrative departments are hereby created:

- (a) Department of Finance
- (b) Department of Law
- (c) Department of Public Safety
- (d) Department of Public Works
- (e) Department of Public Utilities
- (f) Department of Public Health
- (g) Department of Public Welfare
- (h) Department of Farm and Home Demonstration
- (i) Department of Education
- (j) Department of Parks and Recreation
- (k) Department of Personnel

The council may create new departments or subdivisions thereof, combine or abolish existing departments and dis-

tribute the functions thereof or establish temporary departments for special work; provided, however, that the council shall not have the power to abolish, transfer or combine the functions of the departments of finance, law and education.

§ 7.02. DEPARTMENT HEADS. There shall be a director at the head of each department, and the same person may be the director of several departments. The director of each department, except the departments of law and education, shall be appointed by the city manager and may be removed by him at any time; provided, however, that the council may provide that the city manager shall be director of one or more departments. The director of each department shall be chosen on the basis of his general executive and administrative ability and experience and of his education, training and experience in the class of work which he is to administer.

§ 7.03. RESPONSIBLE TO CITY MANAGER. The directors of each department, except the departments of law and education, shall be immediately responsible to the city manager for the administration of their respective departments, and their advice may be required by him on all matters affecting their departments. They shall make reports and recommendations concerning their departments to the city manager under such rules and regulations as he may prescribe.

[fol. 78]

Chapter 8

FINANCIAL ADMINISTRATION

§ 8.01. DEPARTMENT OF FINANCE. The department of finance shall consist of a director of finance, a comptroller or accounting officer, the city treasurer and the commissioner of revenue and their respective offices, insofar as inclusion of these offices is not inconsistent with the Constitution and general laws of the Commonwealth of

Virginia, and such other officers and employees organized into such bureaus, divisions and other units as may be provided by the council or by the orders of the director consistent therewith.

§ 8.02. **DIRECTOR OF FINANCE.** The head of the department of finance shall be the director of finance who may also be the city manager. He shall be a person skilled in municipal accounting and financial control. He shall have charge of the financial affairs of the city, including such powers and duties as may be assigned by the council not inconsistent with the Constitution and general laws of the Commonwealth of Virginia.

§ 8.03. **CITY TREASURER.** The city treasurer shall be the custodian of all public monies of the city and shall have such powers and duties as are provided by general law. He shall perform such other duties as may be assigned by the director of finance or the council not inconsistent with the laws of the Commonwealth.

§ 8.04. **COMMISSIONER OF REVENUE.** The commissioner of revenue shall perform such duties not inconsistent with the laws of the Commonwealth in relation to the assessment of property and licenses as may be assigned by the director of finance or the council.

§ 8.05. **DIVISION OF PURCHASING.** There shall be a division of purchasing which shall be in charge of purchasing all supplies of the city. The head of the division of purchasing shall be the purchasing agent who shall have such duties as may be assigned by the council.

§ 8.06. **ANNUAL AUDIT.** The council shall cause to be made an independent audit of the city's finances at the end of each fiscal year by the auditor of public accounts of the Commonwealth or by a firm of independent certified public accountants to be selected by the council. One copy of the report of such audit shall be always available for public inspection in the office of the city clerk during regular business hours.

Chapter 9

DEPARTMENT OF LAW

§ 9.01. DEPARTMENT OF LAW. The department of law shall consist of the city attorney and such assistant city attorneys and other employees as may be provided by the council.

§ 9.02. CITY ATTORNEY. The head of the department of law shall be the city attorney. He shall be an attorney at law licensed to practice law in the Commonwealth of Virginia. He shall be appointed by the council and shall serve at its pleasure.

§ 9.03. POWERS AND DUTIES. The city attorney shall be the chief legal advisor of the council, the city manager and of all departments, boards, commissions and agencies of the city in all matters affecting the interests of the city. He shall have such powers and duties as may be assigned by the council.

§ 9.04. RESTRICTIONS ON ACTIONS FOR DAMAGES AGAINST CITY. No action shall be maintained against the city for injury or damage to any person or property or for wrongful death alleged to have been sustained by reason of the negligence of the city or of any officer, employee or agent thereof, unless a written statement by the claimant, his agent, attorney or representative, of the nature of the claim and of the time and place at which the injury is alleged to have occurred or been received shall have been filed with the city attorney within sixty days after such cause of action shall have accrued, [fol. 79] except that when the claimant is an infant or non compos mentis, or the injured person dies within such 60 days, such statement may be filed within 120 days. Neither the city attorney nor any other officer, employee or agent of the city shall have authority to waive the foregoing conditions precedent or any of them.

Chapter 10

DEPARTMENT OF PUBLIC SAFETY

§ 10.01. DEPARTMENT OF PUBLIC SAFETY. The department of public safety shall include the bureaus of police and fire protection and may include such other bureaus, divisions and units and have such powers and duties as may be provided or assigned by the council or by the director consistent therewith. The council may continue the Police and Trial Board as authorized for Princess Anne County by Acts of 1954, Chapter 101, as amended by Acts 1960, Chapter 44.

§ 10.02. DIRECTOR OF PUBLIC SAFETY. The head of the department of public safety shall be the director of public safety. He shall have general management and control of the several bureaus, divisions and other units of the department.

§ 10.03. BUREAU OF POLICE. The bureau of police shall consist of a chief of police, who may be the director of public safety, and such other officers and employees as may be provided by the council or by the orders of the director of public safety. The bureau of police shall be responsible for preservation of the public peace, protection of the rights of persons and property and enforcement of laws of the Commonwealth and ordinances of the city. The chief of police and the other members of the police force shall have all the powers and duties of police officers as provided by general law.

§ 10.04. BUREAU OF FIRE PROTECTION. The bureau of fire protection shall consist of the fire chief and such other officers and employees as may be provided by the council or by the orders of the director consistent therewith. The bureau of fire protection shall be responsible for the protection from fire of life and property within the city.

Chapter 11

DEPARTMENT OF PUBLIC WORKS

§ 11.01. DEPARTMENT OF PUBLIC WORKS. The department of public works shall consist of the director of public works and such other officers and employees organized into such bureaus, divisions and other units as may be provided by the council or by the orders of the director consistent therewith.

§ 11.02. FUNCTIONS. The department of public works shall be responsible for the construction and maintenance of all public buildings, streets, roads, bridges and drains, for garbage and refuse collection and disposal and for all other public works, and for the care of all public buildings. It shall also have such other powers and duties as may be assigned by the council.

§ 11.03. DIRECTOR OF PUBLIC WORKS. The head of the department of public works shall be the director of public works. He shall have general management and control of the several bureaus, divisions and other units of the department.

Chapter 12

DEPARTMENT OF PUBLIC UTILITIES

§ 12.01. DEPARTMENT OF PUBLIC UTILITIES. The department of public utilities shall consist of a director of public utilities and such other officers and employees organized into such bureaus, divisions and other units as may be provided by the council or by the orders of the director consistent therewith.

[fol. 80] § 12.02. FUNCTIONS. The department of public utilities shall be responsible for the construction, operation and maintenance of the waterworks system and the sewers and sewage disposal and such other powers and duties as may be assigned by the council.

§ 12.03. **DIRECTOR OF PUBLIC UTILITIES.** The head of the department of public utilities shall be the director of public utilities. He shall have general management and control of the several bureaus, divisions and other units of the department.

Chapter 13

DEPARTMENT OF PUBLIC HEALTH

§ 13.01. **DEPARTMENT OF PUBLIC HEALTH.** The department of public health shall consist of the director of public health and such other officers and employees organized into such bureaus, divisions and other units as may be provided by the council or by the orders of the director consistent therewith.

§ 13.02. **FUNCTIONS.** The department of public health shall be responsible for the exercise of all health functions imposed on municipalities by general law and such other powers and duties as may be assigned by the council.

§ 13.03. **DIRECTOR OF PUBLIC HEALTH.** The head of the department of public health shall be the director of public health. He shall be a physician licensed to practice medicine in the Commonwealth of Virginia. He shall have general management and control of the several bureaus, divisions and other units of the department. He shall have all the powers and duties with respect to the preservation of the public health which are conferred or imposed on municipal boards of health and health officers by the laws of the Commonwealth of Virginia.

Chapter 14

DEPARTMENT OF PUBLIC WELFARE

§ 14.01. **DEPARTMENT OF PUBLIC WELFARE.** The department of public welfare shall consist of the director of public welfare, a welfare board constituted as provided by general law and such officers and employees organized in such bureaus, divisions and other units as

may be provided by the council or by the orders of the director consistent therewith.

§ 14.02. FUNCTIONS. The department of public welfare shall be responsible for the duties imposed by the laws of the Commonwealth of Virginia relating to public assistance and relief of the poor and such other powers and duties as may be assigned by the council.

§ 14.03. DIRECTOR OF PUBLIC WELFARE. The head of the department of public welfare shall be the director of public welfare. He shall have general management and control of the several bureaus, divisions and other units of the department.

Chapter 15

DEPARTMENT OF FARM AND HOME DEMONSTRATION

§ 15.01. DEPARTMENT OF FARM AND HOME DEMONSTRATION. The department of farm and home demonstration shall consist of an agricultural agent, a home demonstration agent and such other officers and employees organized in such bureaus, divisions and other units as may be prescribed by the council or by the orders of the director consistent therewith.

§ 15.02. FUNCTIONS. The department of farm and home demonstration shall exercise all powers which are conferred upon counties relating to county farm and home demonstration work and shall have such other powers and duties as may be assigned by the council.

§ 15.03. DIRECTOR OF FARM AND HOME DEMON-
[fol. 81] STRATION. The director of the department of farm and home demonstration shall be the agricultural agent. He shall be selected from a list of eligibles submitted by the Virginia Polytechnic Institute. He shall have general management and control of the several bureaus, divisions and other units of the department.

Chapter 16

DEPARTMENT OF EDUCATION

§ 16.01. DEPARTMENT OF EDUCATION. The department of education shall consist of the city school board, the division superintendent of schools and the officers and employees thereof. Except as otherwise provided in this charter, the city school board and the division superintendent of schools shall exercise all the powers conferred and perform all the duties imposed upon them by general law.

§ 16.02. SCHOOL BOARD. For a period of three years after the effective date of consolidation the school board shall consist of all members of the school boards of the City of Virginia Beach and Princess Anne County holding office immediately preceding the effective date of this charter. Thereafter the school board shall be composed of seven members who shall be appointed by the council for terms of three years; provided, however, that in the appointment of the initial school board, two members shall be appointed for terms of one year, two for two years and three for three years. Vacancies shall be filled by the council for any unexpired term.

§ 16.03. DIVISION SUPERINTENDENT. The person holding office as division superintendent in both the City of Virginia Beach and Princess Anne County shall continue for the unexpired portion of his term.

Chapter 17

DEPARTMENT OF PARKS AND RECREATION

§ 17.01. DEPARTMENT OF PARKS AND RECREATION. The department of parks and recreation shall consist of the director of parks and recreation and such other officers and employees organized into such bureaus, divisions and other units as may be prescribed by the council or by the orders of the director consistent therewith.

§ 17.02. **FUNCTIONS.** The department of parks and recreation shall be responsible for operating and maintaining public parks, playgrounds and recreation facilities and organizing and conducting recreation programs and shall have such other powers and duties as may be assigned by the council.

§ 17.03. **DIRECTOR OF PARKS AND RECREATION.** The head of the department of parks and recreation shall be the director of parks and recreation. He shall have general management and control of the several bureaus, divisions and other units of the department.

Chapter 18

DEPARTMENT OF PERSONNEL

§ 18.01. **DEPARTMENT OF PERSONNEL.** The department of personnel shall consist of a director of personnel and such other officers and employees organized into such bureaus, divisions and other units, including a personnel board, as may be prescribed by the council or by orders of the director consistent therewith.

§ 18.02. **FUNCTIONS.** The personnel department shall be responsible for the formulation and administration of the personnel policy of the city.

§ 18.03. **DIRECTOR OF PERSONNEL.** The head of the department of personnel shall be the director of personnel. He shall have general management and control of the several bureaus, divisions and other units of the department, except as the council may assign such duties to a personnel board.

[fol. 82]

Chapter 19

CITY PLANNING

§ 19.01. **PLANNING COMMISSION.** There shall be a city planning commission which shall consist of not less than five nor more than fifteen members, and shall be organized as provided by general law. All members of the

commission shall be qualified voters of the city and shall be appointed by the council for terms of four years.

§ 19.02. FUNCTIONS OF PLANNING COMMISSION. The planning commission shall be responsible for making recommendations to the council on all phases of city planning, including a master plan, zoning, and subdivision control. It shall have the powers and duties provided by general law and such other powers and duties as may be assigned by the council.

§ 19.03. BOARD OF ZONING APPEALS. There shall be a board of zoning appeals which shall consist of five members appointed for three-year terms by the circuit court of the city or the judges thereof in vacation.

§ 19.04. POWERS OF THE BOARD OF ZONING APPEALS. The board of zoning appeals shall have all powers granted to boards of zoning appeals by general law.

§ 19.05. APPEALS FROM ACTIONS OF THE BOARD OF ZONING APPEALS. Appeals from any action of the board of zoning appeals may be taken to the circuit court of the city in the manner prescribed by general law.

Chapter 20

ADMINISTRATION OF JUSTICE

§ 20.01. CIRCUIT COURT. The city shall continue to be in and a part of the Twenty-Eighth Judicial Circuit. The Circuit Court of Princess Anne County shall be known as the Circuit Court of the City of Virginia Beach and shall have the same jurisdiction in the City of Virginia Beach as is conferred by general law upon circuit courts of cities of the first class.

§ 20.02. TRANSITION OF CIRCUIT COURT. All actions of every kind, criminal as well as civil, pending in the circuit court of the county on the effective date of this charter shall automatically be transferred to, and shall proceed to final judgment in the circuit court of the city. The

circuit court of the city shall have full authority to issue writs, enforce judgments and decrees and exercise every manner of judicial function in relation to former actions in the circuit court of the county as though no change had been made in the status of the latter.

§ 20.03. MUNICIPAL COURT. There shall be a municipal court for the City of Virginia Beach. Such court shall have both civil and criminal jurisdiction, shall have such other judicial powers as are conferred by general law on municipal courts of cities of the first class, and shall hold court at such times in the boroughs of Princess Anne and Virginia Beach and at such other places as may be determined by the circuit court of the city.

§ 20.04. JUDGES OF THE MUNICIPAL COURT. There shall be a judge of the municipal court and such associate and substitute judges as may be deemed necessary by the council. The judges of such court shall be appointed for terms of four years by the circuit courts of the city or the judges thereof in vacation. Appointments to vacancies shall be made by the circuit court or the judges thereof in vacation and shall be for the unexpired term.

§ 20.05. JUVENILE AND DOMESTIC RELATIONS COURT. There shall be a juvenile and domestic relations [fol. 83] court for the city. Such court shall possess the same jurisdiction and powers as are conferred by law upon juvenile and domestic relations courts of cities of the first class.

§ 20.06. JUDGES OF THE JUVENILE AND DOMESTIC RELATIONS COURT. There shall be a judge of the juvenile and domestic relations court and such associate and substitute judges as may be deemed necessary by the council. The judges of such court shall be appointed for terms of four years by the circuit court of the city or the judges thereof in vacation. Appointments to vacancies shall be made by the circuit court or the judges thereof in vacation and shall be for the unexpired term.

§ 20.07. JUDGES OF COURTS NOT OF RECORD. Any judge, associate judge or substitute judge of the municipal court may also be the judge, or associate judge or substitute judge of the juvenile and domestic relations court.

§ 20.08. TRANSITION OF COURTS NOT OF RECORD. All actions of every kind, criminal as well as civil, pending in the county court of Princess Anne County or the police court of the City of Virginia Beach on the effective date of this charter shall automatically be transferred to, and shall proceed to final judgment in the municipal court or the juvenile and domestic relations court of the city, as the judges thereof may determine.

§ 20.09. CLERK OF COURTS NOT OF RECORD. The council may, at its discretion, provide for a single clerk for all courts not of record or a separate clerk for each court not of record. Each clerk shall be appointed by the court he serves.

§ 20.10. TRANSFER OF RECORDS. Upon the effective date of this charter all records and papers of the county court of Princess Anne County and the police court of the City of Virginia Beach shall be transferred to the appropriate courts of the city.

§ 20.11. HIGH CONSTABLE. The council shall appoint a high constable who shall serve at the pleasure of the council. He shall be the ministerial officer of the courts of the city and shall have such duties as the council may prescribe.

§ 20.12. JUSTICES OF THE PEACE. The circuit court of the city shall appoint such number of justices of the peace as it deems necessary, not to exceed eleven, to serve at its pleasure. The justices of the peace holding office in the City of Virginia Beach and Princess Anne County immediately preceding the effective date of this charter shall continue in office until the expiration of the terms for which they were elected.

§ 20.13. NOTARIES PUBLIC. Notaries public for Princess Anne County shall have full power and authority in the city until their commissions expire.

Chapter 21

MISCELLANEOUS AND TRANSITION PROVISIONS

§ 21.01. ASSETS AND LIABILITIES. Upon the effective date of this charter, all property, real and personal, of the City of Virginia Beach and Princess Anne County, including sanitary districts therein, shall be vested in and owned by the city, and any and all debts due the city and the county, including any sanitary districts therein, shall become due to the city. The city shall assume the payment of all the then outstanding indebtedness, bonded or otherwise; including interest thereon, and all of the then existing contracts and any other obligations of the city and the county, including any sanitary districts therein, in the same manner and to the same extent as if they were originally issued, made, entered into or arose directly by or with the city.

§ 21.02. ELECTION OF CONSTITUTIONAL OFFICERS. The offices of clerk of the circuit court, attorney for the Commonwealth, commissioner of revenue, city treasurer and city sergeant shall be elective and filled in accordance [fol. 84] with the provisions of the Constitution of the Commonwealth and in accordance with the provisions of general law.

§ 21.03. POWERS AND DUTIES OF CONSTITUTIONAL OFFICERS. The clerk of the circuit court of the city, attorney for the Commonwealth, commissioner of revenue, city treasurer, and city sergeant shall have such powers and perform such duties as are provided by the Constitution of the Commonwealth and, except as otherwise provided in this charter, as are provided by the provisions of general law for cities of the first class.

§ 21.04. PRESENT ORDINANCES AND RULES AND REGULATIONS CONTINUED IN EFFECT. All ordinances, rules, regulations and orders legally made by the City of Virginia Beach and Princess Anne County in force at the effective date of this charter, insofar as they or any portion thereof are not inconsistent herewith, or with the consolidation agreement between the City of Virginia Beach and Princess Anne County, shall remain in force and effect within the same area to which they were applicable at the effective date of this charter, until amended or repealed in accordance with the provisions of this charter or general law.

§ 21.05. PRELIMINARY MEETINGS OF COUNCIL. At any time after the General Assembly shall have enacted this charter the councilmen for the consolidated city are authorized and directed to meet at such times and places as they may determine for the purpose of considering the appointment of a city manager, the preparation of ordinances, appointments which are required of them and such other matters as may be necessary to effectuate the transition resulting from the consolidation of the city and the county.

§ 21.06. REPRESENTATION IN THE GENERAL ASSEMBLY. The granting of this charter shall in no way operate to affect or change the representation in the General Assembly of Virginia to which the people of the city were entitled at the time the charter was granted.

§ 21.07. SAVING CLAUSE. In the event that any portion, section or provision of this charter shall be declared illegal, invalid or unconstitutional by final judgment of any court of competent jurisdiction, such judgment shall not invalidate any other portion, section or provision hereof, but all parts of this charter not expressly held to be invalid shall remain in full force and effect.

[fol. 85]

[Handwritten notation: I. concur: Walter E. Hoffman,
U.S.D.J.—I concur: John D. Butzner, USDJ]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION
Civil Action No. 4912

J. E. CLAYTON DAVIS, et al., Plaintiffs,

v.

FRANK A. DUSCH, et al., Defendants.

Civil Action No. 5006

FRANK V. COGLIANDRO, et als., Plaintiffs,

v.

H. R. McPHERSON, et als., Defendants.

OPINION DECIDED NOVEMBER 9, 1965

Argued September 21, 1965

Before Bryan, Circuit Judge, and Hoffman and Butzner,
District Judges.

Henry E. Howell, Jr. (Howell, Anninos & Daugherty) of
Norfolk, Virginia, attorney for plaintiffs.

Harry T. Marshall, City Attorney of the City of Virginia
Beach, of Virginia Beach, Virginia, William L. Forbes,
City Attorney of the City of Chesapeake, of Norfolk, Vir-
ginia, Harry Frazier, III (Hunton, Williams, Gay, Powell
& Gibson) of Richmond, Virginia, attorneys for the de-
fendants.

[File endorsement omitted]

[fol. 86] Albert V. Bryan, Circuit Judge:

Whether the principle of "one person, one vote" applies in the apportionment of members of a municipal council to the several boroughs of a city is the Constitutional question in both of these actions. The immediate issue is whether this question requires a three-judge court to answer it.

The City of Virginia Beach in one case and the City of Chesapeake in the other, both political subdivisions of Virginia, are the municipalities in suit. Plaintiffs in each instance are citizens and qualified voters; defendants are the councilmen and other civic and electoral officials acting under the charters issued to the cities by the State. The governing body in each is a council. The charter establishes its membership. More particularly, it defines the boundaries of the boroughs, and assigns to each a specified number of councilmen for election.

This assignment is now attacked as invalid as a malapportionment violative of the Equal Protection Clause, *Davis v. Mann*, 377 US 678 (1964); and we are asked, because of this alleged Constitutional infirmity in the charter, to enjoin the performance of city functions under it. At the start we are met with the defendants' motion to dissolve the multiple-judge court, which was convened on the prayer of the complaints, and to allow the trial to [fol. 87] proceed before the resident judge alone. The point made is that the controversy is of a local nature, without statewide significance, and so not within the intendment of 28 USC 2281. We agree.

The Virginia Beach charter incorporates into a single city the area of the former city of that name plus all of Princess Anne County. Chesapeake is composed of what was the City of South Norfolk with the addition of Norfolk County. Both charters were granted by special acts of the General Assembly in 1962 on the basis of agreements between the governing bodies of the consolidating areas approved by popular referenda. The apportionments of councilmen in the new cities were stated in the agreements.

A proviso in each charter requires that a new plan for the election of councilmen be submitted to the qualified voters of the city not earlier than five years after the adoption of the charter and not later than September 1, 1971.

Obviously, the apportionments made by the charters, besides being only temporary, are not of statewide interest. Their interpretation would not affect any other municipality or county in Virginia. In such unique situations the requirement of 28 USC 2281, that only a three-judge court may enjoin State officers in carrying out the directions of a State law, is not applicable. This is true here whether the defendants be considered as State or city officers. *Rorick v. Board of Comm'rs*, 307 US 208, 212-13 (1939); *Teeval Co. v. City of New York*, 88 F.Supp. 652 (SDNY 1950); see, e.g., *Bianchi v. Griffing*, 238 F.Supp. 997, 998 (EDNY 1965); appeal dismissed for want of jurisdiction, 34 U.S.L. Week 3117 (U.S. Oct. 12, 1965); *McMillan v. Wagner*, 239 F.Supp. 32, 33 (SDNY 1964).

Furthermore, we think that a three-judge court is also inappropriate because this litigation no longer presents a Constitutional question which is beyond the jurisdiction of a sole District Judge. The statute does not require three judges where the decision will be governed by the application of Constitutional principles already authoritatively established. *James & Co. v. Morgenthau*, 307 US 171, 172; *Harvey v. Early*, 160 F.2d 836, 838 (4 Cir. 1947). That the "one person, one vote" precept embraces councilmanic representation is now settled in this Circuit. *Ellis v. Mayor and City Council of Baltimore* (4 Cir. October 11, 1965); see also *Bianchi v. Griffing*, supra, 238 F.Supp. 997 (EDNY 1965) and authorities cited therein. Moreover, the fact of a plain and flagrant disproportion of councilmen in certain boroughs in each city is not denied by the defendants. What may now and subsequently have to be decided in these cases are matters well within the province and for the judgment of a one-judge court.

[fol. 89] An order will be passed dissolving the three-judge court, and remanding the complaints to the judge

of this court at Norfolk (to whom they were first presented) for direction of such remedies as he deems necessary or proper.

November 9th, 1965.

[fol. 90]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

Civil Action No. 4912

J. E. CLAYTON DAVIS, et al., Plaintiffs,

v.

FRANK A. DUSCH, et al., Defendants.

Civil Action No. 5006

FRANK V. COGLIANDRO, et als., Plaintiffs,

v.

H. R. MCPHERSON, et als., Defendants.

ORDER DISSOLVING THREE-JUDGE COURT—November 9, 1965

Upon consideration of the motions of the defendants in each of these cases to dissolve the three-judge court heretofore constituted for the hearing of them, the Court has concluded, for the reasons stated in its written opinion this day filed, that the said motions should be granted, and, therefore, it is

[File endorsement omitted]

Ordered that the three-judge court be, and it is hereby, [fol. 91] dissolved in each of these cases, and that they be, and are now, remanded for hearing and decision to the District Judge at Norfolk to whom the complaints in these suits were originally presented.

Albert V. Bryan, United States Circuit Judge;

Walter E. Hoffman, United States District Judge;

John D. Butzner, United States District Judge.

November 9th, 1965.

[fol. 92]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

Civil Action No. 4912

J. E. CLAYTON DAVIS, et al., Plaintiffs,

v.

FRANK A. DUSCH, et al., Defendants.

Civil Action No. 5006

FRANK V. COGLIANDRO, et als., Plaintiffs,

v.

H. R. MCPHERSON, et als., Defendants.

MEMORANDUM OPINION—December 7, 1965

These consolidated actions involve the constitutionality of the apportionment of members of the city councils of the City of Virginia Beach (Civil Action 4912) and the City of Chesapeake (Civil Action 5006). The charter of

[File endorsement omitted]

each city establishes the membership of the council body by defining the boundaries of the several districts or boroughs, with each district or borough being assigned a specified number of councilmen for election.

Originally these matters were heard before a three-judge court and, by agreement of counsel, it was stipulated that the evidence submitted in the three-judge court hearing could be considered by the judge to whom these cases were first presented in the event the three-judge court arrived at the conclusion that the court should be dissolved.

By order entered and filed on November 9, 1965, the three-judge court was dissolved for reasons stated in an opinion by Circuit Judge Albert V. Bryan.

[fol. 93] The opinion of Judge Bryan clearly forecasts the inevitable result in these cases. The factual findings and legal conclusions are incorporated herein by reference. The recent decision in *Ellis v. Mayor and City Council of Baltimore* (4 Cir., October 11, 1965) adopts the "one person, one vote" doctrine to councilmanic representation. And "the fact of a plain and flagrant disproportion of councilmen in certain boroughs in each city"—as stated by Judge Bryan—is not denied by any of the defendants. There remains for consideration only the discretion to be exercised in determining how long the temporary systems of representation should continue, bearing in mind that each city was created, essentially to avoid annexation of portions of pre-existing counties, pursuant to charters granted by the General Assembly of Virginia at its 1962 session, the charters being effective January 1, 1963.

Since the three-judge court opinion does not specifically set forth the existing disparities constituting invidious discrimination, it may be well to make these brief additional findings.

Virginia Beach

Representation on Council	District or Borough	Population per District	Estimated Population per District (1/1/64)
1	Blackwater	733	862
1	Pungo	2504	2806
1	Princess Anne	7211	7957
1	Kempsville	13900	22254
1	Lynnhaven	23731	37760
1	Bayside	29048	36027
5	Virginia Beach	8091	10473

[fol. 94] The disparity of representation as revealed by the foregoing figures is too clear to require further discussion. We need not refer to the tax differential which establishes that certain districts or boroughs are effectively without representation, even though they maintain the greater portion of the tax burden.

Chesapeake

Representation on Council	District or Borough	Population per District—1960
5	South Norfolk	22,035
1	Butts Road	3,346
1	Deep Creek	11,719
1	Pleasant Grove	7,073
1	Washington	18,952
1	Western Branch	10,522

Once again the disparity of representation is obvious. Further, the charter of the City of Chesapeake provides for a tie-breaker designated by the Corporation Court to cast a vote whenever there is an equally divided vote among the members.

Taking cognizance of the fact that the General Assembly of Virginia is scheduled to meet in Regular Session during January, 1966, the Court is of the opinion that no order

should be immediately entered, other than to stay further proceedings until the commencement of the constructive session on or about March 14, 1966. By that time we will all know what, if anything, has been done by the legislative body of the Commonwealth of Virginia. The City of Virginia Beach has stated that it proposes to submit charter changes touching upon councilmanic representation. The wisdom and constitutionality of these proposed changes are not before the court at this time. If the plain-[fol. 95] tiffs are dissatisfied with such changes, and arrive at the conclusion that mal-apportionment still exists, they may file a supplemental complaint at the time of the commencement of the constructive session. The City of Chesapeake has not indicated that any charter change will be requested. Such determination is a matter for decision by its legislative representatives and the existing members of the city council. Whatever the final decision may be, this Court is not persuaded that action should be delayed until the 1968 Session of the General Assembly, or until five years following the adoption of the charter. If no constitutional action is taken by the 1966 General Assembly, there will remain the only alternative which will be to order the election of the members of the respective councils on an "at large" basis at such conveniently early date as may be determined by the Court.

The Court reserves for further determination the question of the constitutionality of the tie-breaker as provided by the charter of the City of Chesapeake. This issue may become moot if charter changes are made.

Without passing upon the argument that attorneys' fees should be taxed in favor of the plaintiffs in these actions, it cannot be said that defendants have been guilty of bad faith in not requesting charter changes at the recent Special Session of the General Assembly convened for the purpose of apportioning the congressional districts following a decision by the Supreme Court of Appeals of Virginia. [fol. 96] It was a matter of general knowledge that the

Governor expressed a desire to limit the legislative business at that time. Moreover, the *Ellis* case was not decided until after the three-judge court hearing and the law on the subject was not as clear as it now is.

The right is reserved to renew the request for attorneys' fees in the event further proceedings become necessary but such reservation is without any intimation that these cases are within the limited field of equity matters in which allowances have been made.

Walter E. Hoffman, United States District Judge.
Norfolk, Virginia.

December 7, 1965

[fol. 97]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

Civil Action No. 4912

J. E. CLAYTON DAVIS, et al., Plaintiffs,

v.

FRANK A. DUSCH, et al., Defendants.

Civil Action No. 5006

FRANK V. COGLIANDRO, et als., Plaintiffs,

v.

H. B. McPHERSON, et als., Defendants.

ORDER STAYING FURTHER PROCEEDINGS—December 7, 1965

For reasons stated in a memorandum this day filed, the further proceedings in these cases are stayed and the matters are continued until March 14, 1966, at which time

[File endorsement omitted]

further proceedings may be had on motion of any party in interest.

The Clerk will forward copies of the memorandum and certified copies of this order to counsel of record.

Walter E. Hoffman, United States District Judge.
Norfolk, Virginia

[fol. 98]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION
Civil No. 4912.

J. E. CLAYTON DAVIS, et al., Plaintiffs,

vs.

FRANK A. DUSCH, et al., Defendants.

VOTERS' SUPPLEMENTAL COMPLAINT FILED PURSUANT TO
AUTHORITY CONTAINED IN THE MEMORANDUM OPINION OF
THIS COURT DATED DECEMBER 7, 1965—Filed March 8,
1966

I.

Plaintiffs adopt each and every allegation contained in the original complaint and the amended complaint heretofore filed in this cause as if restated herein, and in addition thereto allege as follows:

II.

That following the Memorandum Opinion and Order of this Court entered December 7, 1965, the General Assembly

[File endorsement omitted]

of the State of Virginia has convened its 1966 Session, during which Session there has been enacted into law an amendment to the Charter of the City of Virginia Beach, Virginia, providing for the election of the members of the Council of the City of Virginia Beach, Virginia. The per-[fol. 99] tinent portions of the subject charter amendment are attached hereto, marked as Exhibit "A".

III.

The subject charter amendment provides for the election of an eleven (11) member City Council and prescribes that all eleven (11) members shall be voted on by the electorate at large, but only four (4) of the eleven (11) members will receive the full weight and voting value of the electors at large, for the Act further provides that there be seven (7) residential councilmen, which, in turn, requires that there be at least one (1) councilman elected for each of the seven (7) residential councilmanic seats.

IV.

The aforesaid enacted charter amendment does not constitute constitutional action on the part of the 1966 General Assembly, with reference to the constituency and organization of the Council of the City of Virginia Beach, which has heretofore been decreed unconstitutional by the Memorandum Opinion and Order of this Court entered December 7, 1965.

V.

Under the provisions of the amended charter, the vote of the plaintiffs and other citizens of the City of Virginia Beach, Virginia, will be illegally diluted, for under the plan the citizens of the Blackwater are granted a residen-[fol. 100] tial councilman for every 862 persons, whereas it takes more than forty (40) times more people to entitle the citizens of Lynnhaven District to a residential councilman, and the candidates receiving the greatest numbers of votes will not be elected. Under this plan, in a contested

election, the eight (8) candidates receiving the largest number of votes could be candidates for the four (4) at large seats, but only four (4) of these candidates would be elected to the Council and residential candidates obtaining fewer votes would be elected.

VI.

Plaintiffs aver that when the inequalities in the above mentioned charter amendment are considered together, they result in a distortion of the constitutional system as established, defined and guaranteed by the Fourteenth Amendment to the Constitution of the United States; that this distortion prevents the City Council of the City of Virginia Beach from being a body representative of the City of Virginia Beach and denies to plaintiffs the equal protection of the laws; and results in even more invidious discrimination than afforded under the form of government heretofore decreed null and void by order of this Court. Plaintiffs further aver that as result thereof a minority of the people of the City of Virginia Beach could control the deliberations and decisions of the City Council of the City of Virginia Beach contrary to the Constitution of the United States of America.

[fol. 101]

VII.

Plaintiffs aver that the unconstitutional apportionment aforesaid can be made constitutional only by elections at large and unless the inequities herein complained of are corrected by this Court the plaintiffs and all others similarly situated will continue to be denied the equal protection of the laws and each day that the malapportioned Council of the City of Virginia Beach continues to function the plaintiffs herein will be irreparably damaged.

VIII.

Plaintiffs appeared at a public hearing held by the Council of the City of Virginia Beach, Virginia, and made clear the unconstitutionality of the aforesaid charter amendment,

then known as the "Seven-Four Plan", and again appeared at the hearing held before the Committee on Counties, Cities and Towns of the Virginia General Assembly, but notwithstanding the patent unconstitutionality of the plan, the defendants persisted in its promulgation and thereby have protracted this litigation and caused plaintiffs to incur substantial additional expense for attorneys' fees and other related expenses.

Wherefore, plaintiffs pray:

A. That this Court decree that the present apportionment of the Council of the City of Virginia Beach, Virginia, denies the plaintiffs and others similarly situated the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States of America.

[fol.102] B. That this Court decree that the amendment to the Charter of the City of Virginia Beach as created and granted by the Commonwealth of Virginia, insofar as it relates to the composition of the Council thereof as now in force, is unconstitutional, null and void.

C. That upon final hearing of this action this Court will grant to the plaintiffs the following relief:

(1) That the defendant members of the Electoral Board of the City of Virginia Beach, Virginia, and all other officials having any duties or authority with respect to elections, be enjoined from printing ballots or holding any elections, primary or otherwise, pursuant to the provisions of the amended Charter of the City of Virginia Beach, Virginia, until there be at large elections for representation on the Council of the City of Virginia Beach, Virginia.

(2) That this Court decree that the election of members of Council of the City of Virginia Beach, Virginia, be held on an at large basis not later than June 14, 1966.

(3) That this Court decree to the plaintiffs an allowance of attorneys' fees and costs and the additional expenses

incurred and made necessary by the unjustified actions of the defendants herein.

(4) That plaintiffs may have such other, further and alternative relief as the nature of this action may require [fol. 103] and this Court may deem proper.

J. E. Clayton Davis, Rolland D. Winter, Cornelius D. Scully, Howard W. Martin.

Subscribed and sworn to before me this 7th day of March, 1966.

Catherine J. Crane, Notary Public.

My commission expires November 16, 1969.

Howell, Anninos & Daugherty, 808 Maritime Tower, Norfolk, Virginia, Counsel for Plaintiffs.

Certificate of Service (omitted in printing).

[fol. 104]

EXHIBIT "A" TO SUPPLEMENTAL COMPLAINT

**UNDERScoreD PORTIONS REPRESENT CHARTER
AMENDMENTS EFFECTED BY 1966 GENERAL
ASSEMBLY ENACTED**

§ 3.01 COMPOSITION. The City shall be divided into seven boroughs. One of such boroughs shall comprise the City of Virginia Beach as existing preceding the effective date of this charter and shall be known as the borough of Virginia Beach, and the remaining six boroughs shall comprise the six magisterial districts of Princess Anne County as existing immediately preceding the effective date of this charter and shall be known as the boroughs of Bayside, Blackwater, Kempsville, Lynnhaven, Princess Anne (formerly known as Seaboard) and Pungo. *The council shall consist of eleven members, one to be elected by the city at large from among the residents of each of*

the seven boroughs and four to be elected by and from the city at large.

§ 3.02 ELECTION OF COUNCILMEN. *On the second Tuesday in June 1966, and on the second Tuesday in June of every fourth year thereafter, there shall be a general election at which the qualified voters of the city shall elect eleven councilmen for terms of four years beginning the first day of September next following the date of their election and until their successors are duly elected and qualified. Each candidate shall state whether he is running at large or from the borough of his residence, but otherwise candidates shall be nominated under general law. Election and qualification of councilmen in 1966 shall terminate the terms of all incumbent councilmen, even though they may have been elected for longer terms.*

[fol. 105]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION
Civil Action No. 4912

J. E. CLAYTON DAVIS, et als., Plaintiffs,

v.

FRANK A. DUSCH, et als., Defendants.

ANSWER TO SUPPLEMENTAL COMPLAINT—
Filed March 16, 1966

For answer to the supplemental complaint filed by the plaintiffs, J. E. Clayton Davis, et als, the defendants, Frank A. Dusch, et als, adopt their answers to the original

[File endorsement omitted]

and amended complaints previously filed and state further as follows:

1. The allegations of paragraph II are admitted.
 2. Defendants deny that only four of the eleven councilmen receive the full weight and voting value of the electors but admit all other allegations of paragraph III.
 3. The allegations of paragraphs IV, V, VI and VII are denied.
 4. Defendants admit that the plaintiffs appeared at the public hearings held by the Council of the City of Virginia Beach and the House Committee on Counties, Cities and Towns of the General Assembly of Virginia and objected to the Charter amendments but deny all other allegations of paragraph VIII.
- [fol. 106] 5. The supplemental complaint fails to state a claim upon which relief can be granted.

Wherefore, the defendants pray that in view of the primary to be held April 5, 1966, for the election of party nominees for the general election to be held June 14, 1966, the Court grant the parties to this action a prompt hearing and rule promptly on the issues presented, that the Court determine that the apportionment of the City Council as provided in the 1966 Charter amendments does not deny the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution and that the Court deny all relief requested by the plaintiffs and dismiss the supplemental complaint.

Frank A. Dusch, John McCombs, Edward T. Caton, III, W. H. Kitchin, Jr., L. S. Hodges, S. Paul Brown, Swindell Pollock, Kenneth N. Whitehurst, Lawrence E. Marshall, James Darden, Earl Tebault, John B. James, Harry Bailey, Joseph T. Crosswhite, Sr., V. Alfred Etheridge, Ivan D. Mapp, William P. Kellam and P. B. White; Harry Frazier, III, Counsel for Defendants.

Harry T. Marshall, City Attorney, 201 Courthouse Drive,
Princess Anne Station, Virginia Beach, Virginia 23456.

Archibald G. Robertson, Harry Frazier, III, Hunton,
Williams, Gay, Powell & Gibson, 1003 Electric Building,
Richmond, Virginia 23212.

[fol. 107] Certificate of Service (omitted in printing).

[fol. 108]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

Civil Action No. 4912

J. E. CLAYTON DAVIS, et al.,

v.

FRANK A. DUSCH, Member, City Council, City of
Virginia Beach, et al.

Transcript of Hearing on Supplemental Complaint—
March 23, 1966.

Norfolk, Virginia
(2:00 P.M.)

Before Hon. Walter E. Hoffman, Ch. J.

PRESENT:

Howell, Anninos and Daugherty (808 Maritime Tower,
Norfolk, Va.), By Henry E. Howell, Jr., Esq., for the
plaintiffs;

Hunton, Williams, Gay, Powell and Gibson (1003 Elec-
tric Bldg., Richmond, Va. 23212), By Harry Frazier, III,
Esq.,

and

Harry T. Marshall, Esq. (City Attorney, City of Vir-
ginia Beach, Va.), for the defendants.

• • • • •

[fol. 109] EDWARD T. CATON, having been first duly sworn, was examined and testified as follows:

[fol. 110] Direct examination.

By Mr. Howell:

Mr. Caton, you were a member of the Council of the City of Virginia Beach during what years? What years did you—

A. Well, I was a councilman for what is now the Borough of Virginia Beach from 1958 until it merged with the County of Princess Anne, and then I served as a council-
[fol. 111] man of the merged City of Virginia Beach until January 1st, or shortly after January—the first week in January 1966.

Q. And you were a member of the Council of the City of Virginia Beach at the time that they considered requesting the General Assembly to permit it to amend its charter to adopt what is known as the Seven-Four plan of councilmanic composition?

A. I was a member of the Council at that time.

[fol. 112] Q. Why did the Council of the City of Virginia Beach decide upon and propose to the General Assembly of Virginia that there be 7 residential councilmen as an essential part of the Seven-Four plan that is embodied in the new amended charter of the City of Virginia Beach?

A. Well, counsel for the City—

[fol. 113] Q. When you say—excuse me, did you mean the City Council—

A. No.

Q. — or the lawyer for the City?

A. The lawyer for the Council gave to us, I believe, four suggested plans, of which he was of the opinion in various

degrees of their application to the one man, one vote ruling of the Supreme Court.

Q. Now, may I interrupt you there since you brought it up in that way?

Did he give number-one priority and sort of a total blessing to holding elections at large?

A. I don't think he made any particular—

Q. That was one of the plans?

A. Right.

I beg your pardon? Say that again.

Q. Was that one of his suggestions that—

A. What, the one that we have adopted?

Q. No. Was one of the four suggestions that he made to the Council, and did it include elections at large in which the Council would be voted on by all of the people without reference to any residential requirements?

A. Oh, yes, that was one of the proposals.

[fol. 114] Q. I would now like to direct your attention as to why the Council decided upon the Seven-Four plan.

A. Well, the Council felt that, as I recall, this plan was best for the City as it is now constituted, the reason being that Virginia Beach, as I am sure you realize, is a very large geographic community, and it is also a rapidly changing community from urban to rural.

The Council, I think, recognized that modern municipal government, to be very frank with you, does usually select an at-large type of representation for its councils.

However, the City of Virginia Beach, as I just indicated, is in a transition period, which was recognized by the charter—

Q. Wait. What was the—

A. Well, we thought—

Q. Where are they transcending from, from where to where?

A. Well, it is growing from rural to urban.

The Court: You previously said from urban to rural.
[fol. 115] The Witness: I beg your pardon, Your Honor.
It is the other way.

By Mr. Howell:

Q. I am sorry to interrupt you—

A. From rural to urban.

Q. —but in view of this transition from urban to rural—

A. Right.

And the feeling was that the Council—that we needed the knowledge on the Council that men from rural areas of the city could provide in the orderly regulation of the City of Virginia Beach.

I might point out that, as on both occasions you mentioned, I have pointed out to the House of Delegates and also the public at that hearing you mentioned, the city public hearing, that agriculture is still the largest industry in the City of Virginia Beach.

And I think the Council recognized that in orderly governing of the present community of Virginia Beach the wisdom or knowledge of men versed in this type of economy that Virginia Beach has were needed on the City Council. And they provided that this way there would be men on the Council from these areas that are totally rural. [fol. 116] However, the Council did recognize that, as pointed out to us by our counsel, the need for the elections to give every man in the city the right to make the selection.

Therefore, we provided for the total at-large selection of councilmen, that is, that everybody in the city would elect all 11 councilmen, and that one would be from each—a residence requirement from each of the boroughs, with four at-large without any residence requirement.

Q. Is it fair to state, based on your testimony, that the motivating factor in the Council of the City of Virginia Beach deciding on the residential requirement for 7 of the 11 councilmen was to guarantee the election of at least a

certain number of agriculturally-educated and oriented councilmen?

A. Well, I would say that the plan that was presented would insure those communities, or at least would indicate to the public, and would result in an election where the men with this background would serve on the Council, and with this knowledge.

Q. And the residential areas were delineated the same way and with the same geographical boundaries as the magisterial districts that were inherited from the County of Princess Anne and which were the boundaries that [fol. 117] composed the boroughs which were the subject of the Court's opinion holding that the previous existing borough system was unconstitutional? There has been no change—

A. I don't—

Q. — in the geographical limits of the boroughs between the borough system that Judge Hoffman ruled on and the geographical limits of the boroughs under the Seven-Four plan?

A. You will have to state that question again.

Q. Has there been any change in the borough limits, geographical limits of the boroughs or voting districts, under the Seven-Four plan as compared to the borough system that we had—

A. The boroughs, as were constituted at the time of merger, are exactly the same.

Q. I see.

So that the guarantee of agricultural representation on the Council was in no way related to the number of inhabitants within the residential districts from which these councilmen would be elected?

A. I am not sure I follow you. I am sorry, Mr. Howell. What are—

Q. You have testified that the purpose of the Seven-Four plan is to insure, in your words, representation from Black-[fol. 118] water District, Princess Anne District, taking two of them, of individuals who have experience and are

intimately acquainted with agricultural problems, since agriculture is still the main business of the City of Virginia Beach?

A. Well, that is one of the—

That wasn't the only reason.

Q. That was one of the reasons?

A. That was one of the reasons.

Q. I am asking you was there any other reason that you decided upon a residential prerequisite for the election of 7 of the 11 councilmen?

A. Yes, there were other reasons.

Q. Now, would you tell us, please?

A. Another one was the size, geographically, of the city. As you probably know, in the heavily-populated community of the northern Virginia Beach—the most heavily or a good, heavily-populated area, if a man, say, from Blackwater in the southern part of the city desired to discuss something with his councilman, he would have to ride approximately 35 to 40 miles to see him.

The members of the Council thought that during this transition period that it would be well to keep the government in reasonable proximity to the constituency, and to have these people living in these areas would give them [fol. 119] that right to promptly visit their councilmen.

Q. So that—

A. That was the second reason, or another reason.

We had another reason.

Q. We have economic interests, and then we have the distance from Blackwater to Princess Anne Courthouse as the second reason. Now, were there any other reasons?

A. Well, yes, I think as a third reason that, as I have already indicated, I think the Council recognized—and we have a city manager form of government, and I think we are as anxious to have it as modern as possible—I think that the Council recognized that the combination of the 4 at-large with the rest—with all at-large, that is, with a residence requirement for 7 of them was a happy stopping

point between on the one hand what you might call the borough, total borough, system of the old rural community of the County of Princess Anne, which we now have in many counties in this state, as you well know, where they are elected from the boroughs by themselves or the magisterial districts, to the ultimate of an at-large system.

This Seven-Four plan is a combination of the two that we felt, that the majority of the Council felt, was a stopping point in this transition period that the City of Virginia Beach is experiencing.

[fol. 120] Q. When you say a stopping point, now—

A. What I mean is—

Q. — where is it you are trying to stop short of?

A. I don't think there is any secret about the fact, Mr. Howell, eventually as the city grows and as the community progresses that it won't be too long before the Council will suggest that all councilmen be elected at large.

Q. Let's get back.

You said that it was a happy stopping point. So that we can get that on the record in a factual manner, what is the goal that you wanted to stop short of? Where were you trying to stop with respect to the goal?

A. Well, what were trying to do, Mr. Howell, was to meet the needs of our community and to provide the best type of government that we had, and our community is unique. In fact, it was the first one of its type in the State of Virginia.

Q. Who was first, Chesapeake or Virginia Beach?

A. Virginia Beach.

Q. Chesapeake was born right shortly thereafter?

A. Very quickly thereafter, very much like Virginia Beach.

And, as I say, in meeting these needs we felt that this was a plan that fit the circumstances of our transitory community.

[fol. 121] Q. Mr. Caton, I certainly don't want to press too far, but I have gotten clear in my mind the economic

factor of having an agriculturally-oriented councilman insured, and I have gotten in my mind the problems of getting to your councilman. The third one I have not gotten on the record sufficiently so that it is clear to me.

You said the only other factor, I believe—

A. No, I—

Q. —or the third factor—

A. Well, may I repeat it? Maybe I could make it clearer.

Q. No. You said that if constituted, that this Seven-Four plan constituted, a happy stopping point in this transitional period.

If I may lead you, in other words, it stops short of giving the full value of the vote to a voting citizen to choose any councilman that he might want. It gave him a chance to vote, but he has to vote for at least one man that lived in Blackwater.

A. Well, I wouldn't put it that way. I would rather put it that the modern system of an urban city is at-large elections, that is, where it is heavily urban, that is, it is an urban community. Virginia Beach is not yet in that situation.

And I said that the Council felt that the combination of election of all of them at large would require that they be [fol. 122] dispersed in the communities where the population had not yet gotten to this urban situation was—that they felt it was wise to have this transition period, and to have this type of plan.

ROLLAND WINTER, having been first duly sworn, was examined and testified as follows:

Direct examination.

[fol. 123] (A chart was marked for identification as P-2.)

By Mr. Howell:

Q. Now, getting over to the side, will you explain to us in such detail as you deem necessary what that chart reflects with reference to the Seven-Four plan?

A. As the Seven-Four plan is now outlined in the briefs, we have three seats that are guaranteed to the three largest boroughs. These three large boroughs contain approximately 81% of the population.

Q. Now, when you say guaranteed, what is the factor that insures the guarantee?

[fol. 124] A. By the requirement of residency.

Q. All right, sir.

A. In addition, we can see that there are four seats left over out of the seven that are guaranteed, and they are from the four smaller boroughs, representing less than 20% of the population of The Beach.

[fol. 125] Q. Limiting my question to the residential, the seven residential councilmen, what is the disparity ratio existing between the Lynnhaven residential councilman and the Blackwater residential councilman? That involves figuring for me the disparity between 38,000 and 900. I know that is not too complicated for many people, but I would like for you to put that in the record.

[fol. 126] With that the witness will be yours, Mr. Frazier.

A. Approximately 42-to-1.

[fol. 127] F. MASON GAMAGE, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Frazier:

Q. Please state your name, your residence, and your occupation.

A. Mason Gamage. I reside at 625 West Lynnhore Circle, Virginia Beach, Kempsville Borough. I am employed as planning director for the City of Virginia Beach.

Q. How long have you been employed as planning director, sir?

A. Since 1952, prior to the merger, and during the period prior to the merger I was employed by the City of Virginia Beach, or the Virginia Beach Borough, in the same capacity.

[fol. 128] Q. Mr. Gamage, would you highlight the physical economic characteristics of the boroughs, one by one. I don't want detail. I want the crucial essentials about each borough.

A. Mr. Frazier, I believe you asked me an earlier question about an area of the city. Did you wish that answered?

By Mr. Frazier:

Q. Yes, sir. I beg your pardon.

A. 301.6 square miles, of which 79.6 would be water.

Q. Leaving a land area of what?

A. I believe 122—or 222.

Q. Thank you.

Now, let's come to the second of the two questions that I asked you at once.

A. Well, these boroughs are composed of the former [fol. 129] magisterial districts of the County of Princess Anne and the former City of Virginia Beach.

Q. Let's start so that we can hurry along, and tell me first about Bayside Borough.

A. Well, Bayside is approximately 28 square miles in area, and for all purposes originally was closely allied to the development of Norfolk or a suburb of Norfolk.

It has perhaps three railroads serving it for industrial development, the Amphibious Base at Little Creek, and it

has a considerable amount of farm land, most of which has been sold for development purposes.

Q. Is it primarily a residential borough?

A. Yes.

Q. Does it also have more or less commercial attributes than other boroughs?

A. It does. It is well served with highways, water, and is in the process of being served to a great degree by a sewer. And it has in its boundaries some of the newer commercial developments, such as the Pembroke Shopping Center.

Q. How about the Bayside Borough?

The Court: That is what he was just talking about.

By Mr. Frazier:

Q. I am sorry. How about the Lynnhaven Borough?

[fol. 130] A. Lynnhaven contains 47 acres—47 square miles, approximately, and is more closely allied to the Borough of Virginia Beach and its development, and it contains numbers of fine homes.

It is allied also to the shellfish industry, having within its boundaries a good portion of the Lynnhaven and Broad Bays. Oystering, crabbing and that sort of thing is an economic phase.

Also, Fort Story and a large portion of Oceana Airfield are within the boundaries, together with a portion of Camp Pendleton.

Q. Would you say that this is primarily a residential type development?

A. With the exceptions which I mentioned, yes.

Q. All right, now, let's go to Kempsville.

A. Well, Kempsville still contains quite a bit of farm land.

The Kempsville Borough is situated south of Bayside and extends on down to the Intercoastal Waterway, adjacent to Princess Anne Borough. It is well served with

highways, and it is fast growing, depending on the extension of utilities to serve its growth.

Primarily the business avenues would be the Military Highway and the Princess Anne Road.

[fol. 131] Q. Now, did I understand you to say this is in a state of transition from primarily agricultural over to residential development?

A. Yes. As the growth expands from the north and from the west from Norfolk, the growth is coming along with the improvement of the utilities, water and sewer.

Q. Are substantial utility extensions into that area now in process?

A. Yes. Water, sewer and a portion of the toll road and the Interstate Highway.

Q. Now, let's go to the Virginia Beach Borough.

A. The Virginia Beach Borough, I believe contains 2.4 square miles. Of this it is largely related to the tourist [fol. 132] industry, the tourist trade, through the presence of the beach, the waterfront, and it serves, I would say, a great deal as a residence for members of the armed forces and school teachers primarily during the winter months. In the summer months the residences and apartments are available to the tourist industry.

Q. Next I guess would be Princess Anne, wouldn't it?

A. Princess Anne of 58.6 square miles is perhaps the next to receive some of the largest amount of growth or transition from rural to urban.

The county seat, former county seat, and present administrative facilities are located at the court house at Princess Anne.

Water is planned to be extended to the court house complex. Sewer is there at the moment. It has on its east the Atlantic Ocean and the suburban community or summer resort of Sandbridge.

There has been approximately 1500 acres of land acquired south of the Lynnhaven Borough, which will be in

the path of development, and only this week we received development plans of a tentative nature on this 1500 acres. So that the development is coming in that direction.

Q. Its economy today, would that be primarily agricultural [fol. 133] cultural as opposed to residential?

A. Primarily agricultural. And the city government perhaps the largest single employer.

Q. Next I suppose would be Pungo or Blackwater.

A. Well, Pungo with 94.4 square miles. Of this 63 square miles is water, which I think is a significant figure.

Ultimately perhaps Pungo will be very important. It contains an airfield which was formerly owned by the government and has for that reason certainly industrial possibilities.

There are no public water or sewer facilities in Pungo that I know of. However, due to the number of miles, square miles, of attractive farm land and to the beauty of its beaches and bay fronts it no doubt will develop very well, very favorably, as a satellite of Princess Anne Borough, for example.

Q. Now, take the last borough.

A. The Borough of Blackwater of 34 square miles is, for all practical purposes, agricultural and farming and forestry and no doubt will stay that way for quite some time.

It is situated on the Intercoastal Waterway, by Carolina on one side and Chesapeake on the other. And unless we were to experience the installation of some large type of government assistance program, such as an atomic re-[fol. 134] search plant or something of that kind, which would be difficult to forecast, it would probably remain in its present category.

I do have, incidentally, the figure of Kempsville square miles, which was 36.6, Mr. Howell.

EDWARD T. CATON, having been previously duly sworn, was further examined and testified as follows:

The Court: Mr. Caton has previously been sworn. His oath will remain in effect.

Direct examination.

By Mr. Frazier:

Q. Mr. Caton, I hope that we will not repeat matters to which you have previously testified, but I do want to consider somewhat the further deliberations regarding the plan that was ultimately adopted by the City Council.

I think you testified adequately as to the reasons why you did not adopt the strictly at-large without residential requirement. We covered that, didn't we?

A. Yes.

[fol. 135] Q. Now, a second plan, I believe, was the one that was ultimately adopted. What were the other two plans that were considered?

[fol. 136] Q. Now, state what another plan was and the considerations surrounding it.

A. Well, the second plan that we considered was equal election districts, that is, divide the city into districts of approximately equal population.

The Council considered that and felt that without population explosion that we would probably have to rearrange those election districts practically every election. And for that reason that plan was passed.

Q. What was the fourth one?

A. I believe the fourth plan was total at-large election with residence requirements from each borough without the floater candidates.

Q. All right. And that was rejected?

[fol. 137] A. Well, that relates to what I previously stated, that the Council recognized that we were in a transition period, and they thought that the combination of the

at-large without any residence requirements and with that partial residence requirement was more in keeping with providing the type of government that we felt was needed.

Q. Now, in answer to questions by Mr. Howell you discussed—

A. I might point out, Mr. Frazier, one other thing that just popped in my mind.

The difficulty with reference to the equal election districts, too, is that the present boroughs as they are constituted have debts that were created while they were either magisterial districts or the former City of Virginia Beach. And it was felt that to cross those lines with the election districts where these boroughs would have to remain by reason of the fact of these debts would confuse matters considerably. That was one of the other reasons that the equal election districts were rejected.

Q. And on the same line there, does your charter permit the levy of tax rates within those boroughs for special purposes?

A. Yes, it does. One of the reasons is to pay these debts.

Q. Does this also apply for other reasons?

[fol. 138] A. Yes.

Well, it applies for those boroughs that are not fully developed that want to develop. They can provide the money to develop them, whereas others might already be developed.

Q. I take it from what you said that the rates—that these would be additional levies over and above the city levy?

A. Yes.

[fol. 139] Cross examination.

By Mr. Howell:

Q. Other than lawyers. In other words, did you all know that no place in the United States of America is there a Seven-Four plan existing in municipal government?

A. Well, just as I pointed out, I don't know of any other place in America exactly like the merger of Virginia Beach and Princess Anne County.

[fol. 140]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION
Civil Action No. 4912

J. E. CLAYTON DAVIS, et al., Plaintiffs,
vs.
FRANK A. DUSCH, et al., Defendants.

MEMORANDUM OPINION—April 8, 1966

By the terms of House Bill 101, the 1966 Session of the General Assembly of Virginia amended and reenacted certain provisions of the charter of the City of Virginia Beach in an effort to remedy the constitutional defects of the existing charter occasioned by reason of councilmanic mal-apportionment. House Bill 101 was signed by the Governor on February 23, 1966, as an emergency measure and is now in effect.

Prior to the effective date of the new legislation the structure of the City Council of the City of Virginia Beach was in accordance with district or borough representation. As so constituted it was an obvious attempt to afford actual personal representation to areas formerly comprising the County of Princess Anne and the old City of Virginia Beach before the effective date of the merger between the County and City which was on January 1, 1963. The charter incorporating the new City of Virginia Beach was enacted

[File endorsement omitted]

by the General Assembly at its 1962 Session on the basis of agreements between the governing bodies of the consolidating area approved by popular referenda. This plan of representation was patently unconstitutional under the "one person, one vote" doctrine as enunciated by the recent decisions of the United States Supreme Court, as applied to councilmanic representation in *Ellis v. Mayor and City Council of Baltimore*, 4 Cir., 352 F.(2d) 123. It was the subject of prior memoranda filed on November 9, 1965 and December 7, 1965. Plaintiffs have now, in accordance with the suggestion of the Court, filed a supplemental complaint attacking the validity of the new statute which, for convenient reference, will be called the "Seven-Four Plan".

Princess Anne County, as it existed prior to the effective date of the merger on January 1, 1963, consisted of six [fol. 141] districts with the 1960 population stated to be as follows:

District	Population (1960)
Blackwater	733
Pungo	2504
Seaboard	7211
Kempsville	13900
Lynnhaven	23731
Bayside	29048

The various members of the Board of Supervisors of Princess Anne County served as representatives of the individual district and were elected by vote of the qualified voters registered in that district. Upon the effective date of the merger, Seaboard District became Princess Anne Borough, but in other respects the geographical boundaries remained the same. Thus Princess Anne County had six members on its Board of Supervisors prior to the formation of the new city.

The old City of Virginia Beach had five councilmen representing 8091 persons according to the 1960 census.

The area comprising the old City of Virginia Beach has been, and is now, largely dependent upon the summer tourist trade for its economic condition, although there are many fine homes throughout the area which are owned by permanent residents.

Former Princess Anne County was approximately 50% urban and 50% rural prior to the merger. The debts of the old county remained with the county under the terms of the merger; the debts of the old City of Virginia Beach remained with the people of that area. This has resulted in an unequal tax rate which continues in the boroughs of the new City of Virginia Beach.

The primary purpose of the merger was to forestall future annexation proceedings contemplated by the City of Norfolk bordering on the Kempsville and Bayside districts into which many citizens of Norfolk were gradually moving and, in addition, land for industrial development was becoming increasingly scarce in the City of Norfolk.

Irrespective of the wisdom of the merger, it has become an accomplished fact. Some pertinent facts of the new City of Virginia Beach are as follows:

1. It consists of 301.6 square miles, of which 222 square miles is made up of land and 79.6 square miles is water.
2. Bayside Borough is approximately 28 square miles in area. While at this time it still has a considerable quantity of farm land, it is essentially a suburb of the City of Norfolk devoted to residential purposes and much of the farm land has been sold for development purposes. It is, therefore, urban in character.

[fol. 142] 3. Lynnhaven Borough contains approximately 47 square miles. With the exception of some activity in the shellfish industry, Fort Story, Camp Pendleton, and the Oceana Air Base, it is likewise a residential area with predominantly urban characteristics.

4. **Kempsville Borough** is approximately 36.6 square miles. It adjoins the City of Norfolk and, while it was formerly largely rural, it is now undergoing a rapid expansion in the residential development field. Its state of transition is such that it will soon be largely urban.
5. **Virginia Beach Borough** contains only 2.4 square miles. Its urban character and great dependence upon the tourist trade has been previously noted.
6. **Princess Anne Borough** consists of 58.6 square miles. It is the former county seat of government and now houses the major administrative facilities, including the courts, serving the new City of Virginia Beach. Despite the fact that it is also in a gradual transition stage from rural to urban, it is still primarily agricultural in nature.
7. **Pungo Borough** contains 94.4 square miles of which 63 square miles is water. During World War II the government operated and maintained an airfield but this has since been abandoned. While there are beaches and bays with attractions for the hunters and fishermen, it remains essentially rural and, despite the growth in residential development, it is unlikely that any material change will be forthcoming during the next decade.
8. **Blackwater Borough**, containing 34 square miles, is agricultural and will probably remain rural for many years to come.

Faced with the problems of this heterogeneous city undergoing governmental transition and a population explosion reflected by the rapid estimated increase between

1960 and 1964¹ the city fathers approached the task of recommending a charter change to come within the constitutional ambit of the "one person, one vote" rule of law.

The new legislation denominated the "Seven-Four Plan" provides for the election of eleven councilmen with the eligible voters of the entire city voting for all candidates. Four persons are elected without regard to their place of residence within the city; the remaining seven, while elected by all voters, must reside in the particular borough and the person must state that he is running from the borough of his residence. For example, Lynnhaven, presently the largest borough in population, would be guaranteed the election of a member of the City Council residing in that borough. Lynnhaven could also have the four members elected at large without regard to residence requirement. The same is true as to Blackwater, the smallest borough. Moreover, the three smallest boroughs, Blackwater, Pungo and Princess Anne, would be assured of the election of one resident from each borough, even though the aggregate of the total population in these counties is considerably less than the population in either Kempsville, Lynnhaven or Bayside.

Plaintiffs urge that the "Seven-Four Plan" is in direct violation of the "one person, one vote" doctrine. They insist that there are only two permissible methods of electing

¹ The percentage increase of population in the various boroughs, according to figures presented by plaintiffs' expert and stated in the Court's memorandum filed December 9, 1965, reveal these approximate figures:

Borough	Percentage Population Increase from 1/1/60 to 1/1/64
Blackwater	17½%
Pungo	12 %
Princess Anne	10 %
Kempsville	60 %
Lynnhaven	59 %
Bayside	24 %
Virginia Beach	21 %

councilmen in any city—one by the familiar at-large election without regard to the place of residence within the city—the other by dividing the city into boroughs or wards of approximately even population and providing for the election of representatives within each borough or ward by the voters of that area. While the question is not free from doubt, this Court does not believe that the constitutional limitations of the “one person, one vote” rule extend that far.

In *Fortson v. Dorsey*, 379 U. S. 433, the Supreme Court considered the Georgia Reapportionment Act which permitted the counties to be divided into senatorial districts, with a proviso that a candidate had to be a resident of the district from which he sought election, but all senators within the county were subjected to a county-wide vote rather than a district vote. In reversing the three-judge federal court holding that voters of one district must join with voters of other districts in selecting a group of senators and thereby nullifying their own choice of senator, Mr. Justice Brennan said:

“It is not accurate to treat a senator from a multi-district county as the representative of only that district within the county wherein he resides. The statute uses districts in multi-district counties merely as the basis of residence for candidates, not for voting or representation. Each district’s senator must be a resident of that district, but since his tenure depends upon the county-wide electorate he must be vigilant to serve the interests of all the people in the county, and not merely those of people in his home district; thus in fact he is the county’s and not merely the district’s senator.”

[Vol. 144] Thus in Blackwater Borough, if Mr. Jones and Mr. Smith declare as candidates for the City Council of the City of Virginia Beach running from the borough of their residence, all qualified voters in Virginia Beach vote

in this contest. If Jones is elected, he then represents the entire population of the City of Virginia Beach. He is the city's councilman and not merely Blackwater's councilman. And if he disregards the interests of people residing in other boroughs, his chances of survival at the next election would be indeed slight.²

It is true that under these circumstances, Blackwater, with the least population of any borough, is assured of a resident councilman. Plaintiffs point out that in *Fortson v. Dorsey*, supra, there was "substantial equality of population" among the 54 senatorial districts, whereas wide disparity exists in the boroughs of the City of Virginia Beach. The Court does not believe that this fact, standing alone, invalidates the plan. As the Supreme Court indicated, there may be instances or circumstances which will not comport with the dictates of the Equal Protection Clause where, designedly or otherwise, the plan operates to minimize or cancel out the voting strength of racial or political elements of the voting population. The record in the instant case makes no such suggestion. The principal and adequate reason for providing for the election of one councilman from each borough is to assure that there will be members of the City Council with some general knowledge of rural problems to the end that this heterogeneous city will be able to give due consideration to questions presented throughout the entire area. It is significant to note, however, that under the "Seven-Four Plan" the con-

² While not a part of the record in this case, it should be noted that a Democratic Primary was held in the City of Virginia Beach on April 5, 1966, under the newly devised "Seven-Four Plan". Twelve candidates ran for the eleven available seats as Democrats. Opposition existed in only one borough where the defeated candidate, having declared for election from that borough, secured more votes in the particular borough of his residence than the successful candidate. Thus it was the city-wide vote which defeated this candidate. Another interesting sidelight is that the candidate from Pungo Borough received more city-wide votes than any of the twelve men on the ballot; Pungo being the second smallest in population of the seven boroughs comprising the City of Virginia Beach.

trol of the City Council can always be vested in the populace of Lynnhaven and Bayside, the two largest boroughs. Assuming that the percentage of qualified voters is in accord with the population, Lynnhaven and Bayside, if united in their efforts, could elect the four councilmen without regard to residence and, together with the two councilmen residing in their respective boroughs, would have the majority control. This would also be true if all eleven councilmen were elected at-large without regard to their place of residence.

Prior to the Supreme Court's decision in *Fortson v. Dorsey*, supra, a three-judge federal court in Georgia had before it the case of *Reed v. Mann*, 237 F. Supp. 22. The judges comprising this court were the same who decided [fol. 145] *Dorsey v. Fortson*, 228 F. Supp. 259, which was later reversed *sub nom. Fortson v. Dorsey*. In *Reed* the statutory scheme for DeKalb County called for the county-wide election of five members of its governing body, with four of the members being required to be residents of the district which they offered to represent, the county being divided into four districts and with the proviso that no two members (excluding the chairman) could reside in the same district. The plan was attacked on the theory of deprivation of representative government because the county-wide vote may have overridden the will of those residing in the district. In rejecting this argument the court pointed out that the selection of a system, so long as it is not proscribed by the federal constitution, is not the business of the court. The court notes that "the political unit here involved is DeKalb County, and it is plain that every voter in the county is treated equally". So also, the City of Virginia Beach is the political unit here involved and every voter in the city is treated equally. As *Reed* states, "it is to the residents of the particular unit that the one-man, one vote rule is to be applied" and "there is no right *per se* to select representatives from any given size district or unit".

The problem presented was recently considered in *O'Shields v. McNair*, — F. Supp. —, decided February 28, 1966, by a three-judge court consisting of Chief Judge Haynsworth and District Judges Martin and Hemphill. By virtue of the South Carolina State Reapportionment Act, some small counties were guaranteed a resident senator while other counties of more than twice the population had no such protected right. Of course, unlike the issue here presented, the senatorial candidates were not elected by the voters of the entire state and hence, when elected, became the senator from a particular county or, in multi-county districts, the voters cast their ballots on each senatorial candidate whether the candidate resided in that county or not, and such successful candidate was designated as the representative of the particular district. In discussing the related problem, Chief Judge Haynsworth had this to say:

"We are also aware of the fact that a number of municipalities in this state elect their councils under ward-residence rules. Each electoral contest is framed by opposition between residents of the same ward, but the election is determined by the results of city-wide voting. We may assume that in some of those cities, particularly those which have been operating under that system for a long time, some wards may vary greatly in population.

"We may also assume the general constitutionality of such municipal election schemes, but that does not dispose of the present problem. Here there is no supporting history, and the record furnishes no basis for a finding of a compelling need for resident Senators in some small counties but not in other counties of comparable size and in still others much larger."

[fol. 146] In contrast, the history—past and present—of the area and population now comprising the City of Virginia Beach demonstrates the compelling need, at least

during an appreciable transition period, for knowledge of rural problems in handling the affairs of one of the largest area-wise cities in the United States. Bluntly speaking, there is a vast area of the present City of Virginia Beach which should never be referred to as a city. District representation from the old County of Princess Anne with elected members of the Board of Supervisors selected only by the voters of the particular district has now been changed to permit city-wide voting. The "Seven-Four Plan" is not an evasive scheme to avoid the consequences of reapportionment or to perpetuate certain persons in office. The plan does not preserve any controlling influence of the smaller boroughs, but does indicate a desire for intelligent expression of views on subjects relating to agriculture which remains a great economic factor in the welfare of the entire population. As the plan becomes effective, if it then operates to minimize or cancel out the voting strength of racial or political elements of the voting population, it will be time enough to consider whether the system still passes constitutional muster. *Fortson v. Dorsey*, supra.

What must not be overlooked is the fact that each borough will have one or more candidates for the City Council; they are elected by all of the voters of the city to represent the entire city, not merely the borough wherein they reside. If their election was otherwise, the "Seven-Four Plan" would be constitutionally impermissible. The four members elected at-large without regard to residence would, under normal circumstances, be from the more heavily populated boroughs. The fact that three of the eleven council members must come from the less populated boroughs does not, standing alone, amount to invidious discrimination where they are elected by the voters of the entire city.

The complaint and supplemental complaint will be dismissed. As the plaintiffs substantially prevailed in the initial phase of this litigation, and the defendants have

prevailed in the later proceeding, each party will bear its own costs. Counsel for the defendants will prepare and present an appropriate decree after affording an opportunity for inspection and endorsement by counsel for the plaintiffs.

Walter E. Hoffman, United States District Judge.

Norfolk, Virginia

April 8th, 1966

[fol. 147]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

J. E. CLAYTON DAVIS, et al., Plaintiffs,

vs.

FRANK A. DUSCH, et al., Defendants.

FINAL DECREE—April 14, 1966

For reasons stated in a Memorandum filed herein on April 8, 1966, it is Adjudged, Ordered and Decreed that the Complaint, Amended Complaint and Supplemental Complaint herein are dismissed and the relief sought by the plaintiffs therein is denied; and

It is further Ordered that plaintiffs' motion for an interim injunction and stay pending appeal be and the same hereby is denied; and

It is further Adjudged, Ordered and Decreed that each party will bear his own costs, to which action of the Court the plaintiffs duly noted their exception.

[File endorsement omitted]

Walter E. Hoffman, United States District Judge,
Norfolk, Virginia
April 14, 1966

Henry E. Howell, Jr., Of counsel for Plaintiffs.

Harry T. Marshall, Of counsel for Defendants.

[fol. 148] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 149]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10,592

J. E. CLAYTON DAVIS, ROLLAND D. WINTER, CORNELIUS D.
SCULLY, and HOWARD W. MARTIN, Appellants,

versus

FRANK A. DUSCH, Member, City Council, City of
Virginia Beach, et al., Appellees.

Appeal from the United States District Court for the
Eastern District of Virginia, at Norfolk. Walter E. Hoff-
man, Chief District Judge.

Argued May 4, 1966.

Before Boreman, Bryan and Bell, Circuit Judges.

OPINION—Filed and Entered May 30, 1966

[fol. 150] Henry E. Howell, Jr., (Howell, Anninos &
Daugherty on brief) for Appellants, and Harry Frazier,
III, (Harry T. Marshall, City Attorney, Virginia Beach,
Virginia, and Hunton, Williams, Gay, Powell & Gibson on
brief) for Appellees.

Albert V. Bryan, Circuit Judge:

Apportionment of councilmen of the City of Virginia Beach, Virginia, among its seven boroughs presents this controversy. The original allocation in the city charter was annulled by the District Court in an earlier proceeding¹, as denying the electorate one-person-one-vote equality². The charter was then amended by the General Assembly of Virginia, in the January-March 1966 session to provide a new plan.³ To a renewed attack on the same ground, the District Court held the present pattern impregnable. The holding is now appealed and this court reverses.

The contested allotment of members of the council, the governing body of the city, is commonly known as the Seven-Four plan. It provides for 11 councilmen, *all to be selected by the qualified voters throughout the entire city.* [fol. 151] However, 7 members are apportioned among 7 boroughs, one to each borough who must be a resident of that borough. The remaining 4 members are assigned to the city at large and may reside anywhere within its corporate limits.

The boroughs, their respective sizes and populations are as follows:

Area in Square Miles	Borough	1960 Population
34	Blackwater	733
94.4	Pungo	2,504
58.6	Princess Anne	7,211
36.6	Kempsville	13,900
47	Lynnhaven	23,731
28	Bayside	29,048
2.4	Virginia Beach	8,091

¹ Davis et al. v. Dusch et al.; (E.D.Va.), unreported opinions of 3-judge court dated Nov. 9, 1965 and of single judge dated Dec. 7, 1965.

² Davis v. Mann, 377 US 678 (1964); Ellis v. Mayor and City Council of Baltimore, 352 F2d 123 (4 Cir. 1965).

³ Acts of General Assembly, 1966, ch. 39, p. 89, H.B. 101, approved Feb. 23, 1966.

The present City of Virginia Beach is the result of a consolidation on January 1, 1963 of the previous city of that name and the adjoining Princess Anne County. At that time the County was divided into 6 magisterial districts corresponding with, and having the same names as, the present boroughs, except that the borough of Princess Anne was formerly Seaboard District. Each district elected a supervisor, and these 6 supervisors constituted the governing County Board of Supervisors. The old City of Virginia Beach had 5 councilmen. The new City's council membership was a combination of the 6 former County supervisors and the 5 former councilmen. How- [fol 152] ever, as will have been noted, 5 councilmen of the old city are now disposed as follows: to the Virginia Beach borough 1 and to the new city at large 4.

The earlier city was, as is now the borough of Virginia Beach, an oceanside resort looking mainly to summer tourists for its economy. Princess Anne County was formerly half urban and half rural. The new city encompasses about 301.6 square miles, of which 79.6 is water. As found by the District Court, the boroughs are generally of the following character:

Blackwater is agricultural and is expected to continue so for many years.

Pungo is "essentially rural".

Princess Anne, formerly the county seat and now containing the administrative agencies and the State courts, is "still primarily agricultural in nature".

Kempsville is changing rapidly from rural to urban.

Lynnhaven is "a residential area with predominantly urban characteristics".

Boyside "has a considerable quantity of farm land" but as a suburb of the City of Norfolk many of its tracts have been developed for residential occupancy, and the borough has taken on an urban complexion.

Virginia Beach as a borough continues to be a seaside resort as it has always been.

[fol. 153] To sustain the 7-4 formula, substantial reliance is put in the requirement in the 1966 Act that the city-wide voters elect all the councilmen. Thus it is stressed, the ballots of voters in the smaller boroughs are not accorded greater weight than those cast in the larger boroughs; the small-borough voter's ballot is not more effective in electing a councilman than that of the large-borough elector. Correspondingly, the value of the larger-borough vote does not exceed the smaller-borough vote. The one-person-one-vote mandate is thus purportedly obeyed.

But full compliance with the 14th Amendment's Equal Protection Clause, we think, is still wanting. The principle of one-person-one-vote extends also to the level of representation, and exacts approximately equal representation of the people—that each legislator, State or municipal, represent a reasonably like number in population. But that is not achieved in the 7-4 plan; the imbalance in representation in the council is obvious.

For example, Blackwater containing 733 people will have the same assured representation as the borough of Lynnhaven with 23,731 persons, or Bayside with 29,048, or Kempsville with 13,900. Similar contrasts are evident. This disparateness is not cured by the city-wide election provision. "It is the distribution of . . . [members] rather than the method of distributing . . . [them] that must satisfy the demands of the Equal Protection Clause". *Burns v. Richardson*, 34 U.S.L. Week 4365, 4366 fn. 4 (U.S. April 25, 1966).

Nor is this unequivalence of representation evened by the stipulation for 4 at-large councilmen to represent all of the boroughs. Their election would in no circumstances [fol. 154] equalize the representation of the larger boroughs with that of the smaller. True, Lynnhaven and Bayside as the two largest boroughs population-wise could, if they collaborated, elect all of the 4 members. However, if

each elected 2, and even if these were considered as in actuality councilmen of that borough alone, giving it 3 members, the numerical representation per councilman would be far greater than that of Blackwater's member or Pungo's. Indeed, this would be so if all 4 at-large councilmen came from the largest borough, Bayside. Consequently, to repeat, the provision for 4 city-wide members does not remedy or in any way affect the disproportion of representation of the 7 borough members.

That equal representation is embraced in the Constitutional demand, epitomized as the rule of one-person-one-vote, is comprehensively expounded by Judge Sobeloff for this court in *Ellis v. Mayor and City Council of Baltimore*, 352 F2d 123 (4 Cir. 1965). Importantly, the case's subject is fairness in drawing councilmanic election wards and the Constitutional criteria therefor. The opinion demonstrates, *passim*, that the "true thrust" of *Reynolds v. Sims*, 377 US 533 (1964) and its kin—*WMCA, Inc. v. Lomenzo*, 377 US 633; *Maryland Committee v. Tawes*, 377 US 656; *Davis v. Mann*, 377 US 678; *Roman v. Sincock*, 377 US 695; and *Lucas v. Forty-Fourth General Assembly of Colorado*, 377 US 713—is that "the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, *without regard to race, sex, economic status, or place of residence within a State*". (Accent added.) 352 F2d at 128. A city council was there analogized to a State legislature with the admonition that "seats in both houses . . . must be apportioned substantially on a population basis". *Id.* at 129. This distillation would only be watered down by further disquisition or by a rehearsal of the pat quotations the opinion takes from these precedents.

Fortson v. Dorsey, 379 US 433 (1965), cited to sustain the validity of the instant plan, finds acceptable only half of the present design. No fault was found there in the choice of State senators in a multi-district county by a county-wide electorate, with the requirement that each sen-

ator be a resident of one of the districts. True, this scheme finds a parallel in the City of Virginia Beach's charter provision. But there the resemblance ends. In *Fortson* the Court significantly contracted its approval to the method of selection. It explicitly noted the absence of any substantial inequality among the districts. Had there been a vast disparity, such as Blackwater's 733 to Bayside's 29,048, it is not readily conceivable that the Court would have given its endorsement. In *O'Shields et al. v. McNair et al.* (D.S.C. 3-judge court, Feb. 28, 1966) Chief Judge Haynsworth of this court, writing the opinion, termed the substantial population equality of the districts in *Fortson* as "crucial". We agree.

Altogether unrealistic is the assumption that the member from the smaller populated political subdivision would give, or could humanly be expected to give, the far greater populated subdivisions representation equal to that he accords his residence constituency. Nor would his naturally dominating provincial interest be neutralized by his dependence upon the electorate of the entire city for his office. His subsequent defeat, because of a show of parochialism, would not remove the inequality in representation, for the choice of a successor would still be limited to the same district. The smaller area of population would thus continue to have representation equivalent to the much larger districts. This curtailment upon the selectivity of potential candidates is further proof of the vulnerability of the plan. Manifestly, the discussion in *Fortson v. Dorsey*, *supra*, 379 US 433, 438 seemingly discounting the fear of sectionalism in a district's legislator was conditioned upon "substantial equality of population" among the legislative districts there.

Moreover, confessedly, the Virginia Beach plan was proposed, and drafted with an eye, to include in the makeup of the council the representation of the peculiar interests of each borough. It was architected to give voice to the agricultural or non-urban concerns of the smaller bor-

oughs. However understandable, reasons of this kind may not be counted in appraising the Constitutionality of an apportionment. *Reynolds v. Sims*, 377 US 533, 562 (1964); *Ellis v. Mayor and City Council of Baltimore*, supra, 352 F2d 123, 128.

Unless enjoined, the 1966 apportionment will control in the next general election of councilmen, now scheduled by general statute for June 14, 1966. It governed in a primary election on April 5, 1966 for the nomination of candidates in the general election. Protestants of the plan ask us to enjoin its further employment, and to order that the June election be held on the basis of a selection of all 11 councilmen from the city at large. However, we think such decrees would be an unneeded disturbance of municipal affairs at this time.

[fol. 157] Therefore, the election will be allowed to proceed without delay. The successful candidates will be permitted to organize and serve as the council of the City of Virginia Beach until the next session, whether special or regular, of the General Assembly of Virginia. If no reapportionment is then made of the councilmen, the District Court shall set aside the current apportionment and order an election of the councilmen at large or realign the boroughs so as to equalize substantially their populations.

Counsel fees will not be awarded the protestants, but the City of Virginia Beach will be ordered to pay the costs in the trial court and on appeal. This case will be remanded to the District Court with directions to retain jurisdiction and to proceed in accordance with the views herein expressed.

Reversed and remanded.

[fol. 158]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 10,592

J. E. CLAYTON DAVIS, ROLLAND D. WINTER, CORNELIUS D.
SCULLY and HOWARD W. MARTIN, Appellants,

vs.

FRANK A. DUSCH, Member, City Council, City of
Virginia Beach, et al., Appellees.

Appeal from the United States District for the Eastern
District of Virginia.

This cause came on to be heard on the record from the
United States District Court for the Eastern District of
Virginia, and was argued by counsel.

JUDGMENT—May 30, 1966

On consideration whereof, It is now here ordered and
adjudged by this Court that the judgment of the said Dis-
trict Court appealed from, in this cause, be, and the same
is hereby, reversed with costs; and that this cause be, and
the same is hereby, remanded to the United States Dis-
trict Court for the Eastern District of Virginia, at Norfolk,
for further proceedings consistent with the opinion of the
Court filed herein.

Albert V. Bryan, United States Circuit Judge.

[File endorsement omitted]

[fol. 159]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10,592

J. E. CLAYTON DAVIS, ROLLAND D. WINTER, CORNELIUS D.
SCULLY and HOWARD W. MARTIN, Appellants,

v.

FRANK A. DUSCH, Member, City Council, City of
Virginia Beach, et al., Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed August 26, 1966

I. Notice is hereby given that Frank A. Dusch, Member, City Council, City of Virginia Beach, et al., the appellees above named, hereby appeal to the Supreme Court of the United States from an order entered herein on May 30, 1966, declaring unconstitutional the apportionment of the members of the city council of the City of Virginia Beach, Virginia, and remanding the case to the United States District Court for the Eastern District of Virginia for further action if the General Assembly of Virginia at its next session should fail to reapportion.

This appeal is taken pursuant to 28 U.S.C.A. § 1254(2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript all documents and papers pertaining to this cause filed in this Court.

[File endorsement omitted]

III. The following questions are presented by this appeal:

[fol. 160] (1) Whether the doctrine of "one person, one vote," as enunciated in *Reynolds v. Sims*, 377 U.S. 533 (1964) and subsequent decisions for apportionment of members of state legislatures, also applies to the apportionment of members of a city council among the several boroughs or wards of a city.

(2) If such doctrine does apply, whether the "seven-four plan" prescribed by the charter of the City of Virginia Beach, Virginia (Ch. 147, Acts of Assembly of 1962, as amended by Ch. 39, Acts of Assembly of 1966) for the election of councilmen violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Archibald G. Robertson, Attorney for Frank A. Dusch, et al.

Harry T. Marshall, City Attorney, Courthouse Drive, Princess Anne Station, Virginia Beach, Virginia 23456.

Archibald G. Robertson, Harry Frazier, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212.

Certificate of Service (omitted in printing).

[fol. 162] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 163]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 10,592

**J. E. CLAYTON DAVIS, ROLLAND D. WINTER, CORNELIUS D.
SCULLY and HOWARD W. MARTIN, Appellants,**

vs.

**FRANK A. DUSCH, Member, City Council, City of
Virginia Beach, et al., Appellees.**

ORDER EXTENDING TIME—Filed October 26, 1966

On motion of Frank A. Dusch et al., made on October 25, 1966, and without objection by J. E. Clayton Davis et al., for good cause shown, it is ordered that pursuant to section 13(1) of the Revised Rules of the Supreme Court of the United States the 60-day period for docketing this case on appeal to the Supreme Court of the United States by Frank A. Dusch et al., be, and it is hereby, extended for a period of seven (7) days.

The Clerk of this Court shall certify a copy of this order to the Clerk of the Supreme Court of the United States.

Albert V. Bryan, United States Circuit Judge.

[File endorsement omitted]

[fol. 164]

SUPREME COURT OF THE UNITED STATES

No. 724—October Term, 1966

FRANK A. DUSCH, et al., Appellants,

v.

J. E. CLAYTON DAVIS, et al.

**Appeal from the United States Court of Appeals for the
Fourth Circuit.**

ORDER POSTPONING JURISDICTION—January 9, 1967

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction in this case is postponed to the hearing of the case on the merits. The case is placed on the summary calendar and set for oral argument immediately following No. 491. In addition to the merits of the case, counsel are directed to brief and present oral argument on the question of whether a three-judge court should have been convened.